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# In the Supreme Court of the United States

IN RE SCOTT ALAN HEIMERMANN,
*Petitioner,*

## PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS

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## QUESTIONS PRESENTED

Petitioner Scott Alan Heimermann's verified Petition for Original Writ of Habeas Corpus ("Petition") tells of rare and exceptional circumstances. Though innocent, Heimermann was convicted in December 1991 and later sentenced to two consecutive life terms in prison for the August 19, 1989 murders of FBI Top Ten Fugitive Mohammad Binwalee and his bodyguard, Dion Russell. Only through the initiation of the key State witnesses' recantations - the triggermen who provided the prosecution's only direct evidence implicating Heimermann in the two murders -- several new witnesses who made statements to support Heimermann's innocence after he was convicted and other new documentary evidence of Heimermann's innocence that is still in the possession of the State of Wisconsin and which has not yet been presented to a court substantially verifying the recantations' reliability, is Heimermann finally now able to make a case of his actual innocence after 19 years of suffering wrongly. The new evidence of Heimermann's innocence also implicate Milwaukee Drug Unit officers through a long-time informant named Edward J. Piscitello whom together wrongly exposed Heimermann to the two murders and then together proceeded to deliberately scapegoat Heimermann in the homicides. Despite the fact that Heimermann's new evidence *eviscerates* the State's case against him, no court has ever held an evidentiary hearing to assess the substantial new evidence that shows Heimermann is actually innocent. The questions presented are:

1. Whether transfer to the United States District Court for the Eastern District of Wisconsin for habeas

discovery and an evidentiary hearing for determination pursuant to this Court's original habeas jurisdiction is warranted in this exceptional case based upon evidence of Petitioner's factual innocence discovered subsequent to a procedurally corrupt process and unfair trial when the Petitioner has raised a substantial showing of deliberate framing-innocence, the lower federal courts refused to address his innocence on the merits in his first federal habeas petition and no state or federal court has allowed discovery nor an evidentiary hearing to examine his new evidence of innocence and state court fact-finding has been inadequate?

2. Whether continuing to incarcerate the 'actually innocent' is just as violative of the Eighth Amendment as executing them where, in this instance, corrupt criminal trial proceedings and the underlying continuous erroneous lower court rulings are overriding Petitioner's right not to be punished and upon the new evidence of innocence in this case shows a career informant and his handlers within law enforcement purposely exposing Petitioner to murder and then together deliberately scapegoating him in those very homicides?

## PARTIES TO THE PROCEEDINGS

This is an original habeas corpus proceeding in which, Petitioner, Scott Alan Heimermann, is a state prisoner sentenced to two consecutive life terms of imprisonment and is in the current custody of Michael S. Thurmer, Warden of the Wisconsin state penitentiary in Waupun, Wisconsin.

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## PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS

Petitioner, Scott Alan Heimermann, respectfully requests that this Court transfer for production of 'as-yet-undisclosed-state-evidence,' evidentiary hearing and determination his application for original habeas corpus to the United States District Court for the Eastern District of Wisconsin in accordance with its authority under 28 U.S.C. § 2241(b).

## OPINIONS BELOW

The opinions of the United States Court of Appeals for the Seventh Circuit denying authorization to file a successive habeas petition and the decisions of the State of Wisconsin courts denying post-conviction relief, are attached at App. 1a through 19a.

## JURISDICTION

This Court has jurisdiction under Rule 20.4(a), 28 U.S.C. §§ 2241(b), 2254(a), and Article III of the United States Constitution.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution states, in relevant part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law. . ."

The Eighth Amendment of the United States Constitution states, in relevant part: ". . . nor cruel and unusual punishments inflicted."

## STATEMENT OF FACTS

### A. THE MILWAUKEE COUNTY DISTRICT ATTORNEY'S OFFICE PRESENTATION OF IT'S CASE AGAINST HEIMERMANN.

During the early evening hours of August 19, 1989, Mohammad Binwalee and Dion Russell were shot and killed by Edward J. Piscitello and Joseph Isajiw at Heimermann's home on South 35th Street in Milwaukee, Wisconsin, entombed in the basement flooring of that residence, and for the next 19 months the murders lay dormant.

On March 8, 1991, Milwaukee County Deputy District Attorney Robert Donohoo called Piscitello and homicide detective Brian O'Keefe at a search warrant proceeding. (App. at 47a-60a.) The transcript of the search warrant proceeding stayed sealed, and did not become a part of the record until March of 1998. The transcript of the search warrant proceeding reveals that homicide detective Brian O'Keefe vouched for the reliability of Piscitello who had been a career informant for the Milwaukee law enforcement community since the 1970s. (App. at 50a, 111a,¶3.) Piscitello told the Court Commissioner that Heimermann, along with nine other alleged people, was present at the residence at South 35th Street when Binwalee and Russell were shot and killed and that Heimermann personally pawned jewelry taken from the victims. (App. at 51a-55a.) O'Keefe then testified that his investigation indicated that Heimermann sold items of jewelry at Stein's Jewelry during August of 1989. (App. at 56a.) Additionally, O'Keefe testified that Milwaukee police "weren't aware of the homicides

actually having occurred" before the discovery of the bodies on March 8, 1991. (App. at 58a.)

In December of 1991, a Milwaukee County jury found Heimermann guilty of two counts of first degree intentional homicide, party to a crime, contrary to Wis. Stat §§ 939.05 and 940.01. As presented at Heimermann's trial, the underlying facts of the State's case are set forth in the Wisconsin Court of Appeals' opinion on direct appeal. ***State v. Heimermann***, Case No. 1995AP225, 1995 Wisc. App. LEXIS 967 at **3-5 (Wis. Ct. App. Aug. 8, 1995) (unpublished opinion).

**B. HEIMERMANN'S DEFENSE AT TRIAL.**

Heimermann testified in his own defense that in mid-1986, he came to Milwaukee from his family's dairy farm in rural Calumet County, Wisconsin, to make his fortune in real estate; that he was a young and successful real estate investor whom dealt with millions of dollars worth of enhanced value on foreclosed and abandoned properties, and that in his first year of business, he generated roughly $800,000 in annual revenue. (Court Reporter Annie L. Schmidt Trial Transcript, Dec. 11, 1991 at 6-7.)

Heimermann testified that in mid-April 1989, Piscitello initiated contact with him at a Marquette University area bar located at 22nd and West Wells Street in Milwaukee. (*Id.* at 9.) Heimermann testified he attended this Marquette area bar on a regular basis with friends. (*Id.*) He testified that Piscitello eventually offered him the chance to work on his late Aunt's "two million dollar estate" roughly three weeks after they met. Heimermann testified that he was excited to meet Piscitello because at the time his real

estate business was "in terrible shape." (*Id.* at 8.) Heimermann testified he desired to overcome his recent management failures in his real estate company with help from Piscitello, whom he thought could assist him in getting back to making the more than $800,000 his company generated in its first year of business. (*Id.*) Heimermann testified that he even allowed Piscitello to move in with him after Piscitello disclosed that he wanted to get out of his own apartment. Heimermann testified that after Piscitello moved in with him, Piscitello talked him into quitting his sales job at the local Phil Token car dealership (at the time, his only source of income) so that the two of them could work on the two-million dollar estate deal. (*Id.* at 13.) Heimermann testified that another one of Piscitello's ideas was that the two of them move into South 35th Street until the two-million dollar estate deal closed. (Court Reporter Veronica Mayfield Trial Transcript, Dec. 11, 1991 at 3-5.)

Heimermann testified this was when the trouble started and he later realized that he made himself vulnerable and financially reliant on Piscitello. Before this incident, Heimermann testified that he was perfectly content with working at the car dealership, looking forward to closing the next promising real estate deal. Then Piscitello came along and *wham!* Once Piscitello moved in with him, everything, he knew about himself was thrown out of balance. For example, he testified that he ended up accompanying Piscitello to the City of Milwaukee Police Department almost on a daily basis where Piscitello said he was given money for "favors" he did for Milwaukee police. (*Id.* at 15.) Heimermann testified he did not know that Piscitello was an informant at the time as Piscitello had maintained that several Milwaukee police officers,

were "family contacts" of his. (*Id.*) During these contacts with Piscitello, Heimermann said that he eventually became acquainted with Binwalee and other members of Milwaukee's drug world, initiating a series of events culminating into Heimermann witnessing the deaths of Binwalee and Russell.

Heimermann also testified that he had no advance knowledge about Piscitello's plan to murder Binwalee and Russell, and did not knowingly assist Piscitello and Isajiw in committing the murders. (*Id.* at 44-45). He testified that Piscitello threatened to kill Heimermann and members of his family if he did not cooperate in the post-murder activities.[1]

The defense also called Christine Vanderkieft, Heimermann's girlfriend, to testify. She testified that in May 1989 she spoke to Heimermann and said he "was really excited he found an investor to work on his real estate business. It wasn't going anywhere. He met Ed and things were going to start taking off." (Trial Transcript, Dec. 12, 1991 at 4-5.) Then in September 1989, Vanderkieft said she flew to Florida to see Heimermann for his birthday and he said at that time "Ed had killed someone, and if anything would come about -- if anything would go down -- he would be framed for it." (*Id.* at 8.)

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[1] An illustration of this threat took place during the 1989 Christmas season. Piscitello showed up at Heimermann parents' home in rural Calumet County in a big black limo with other strangers from Milwaukee, reminding Heimermann that he knew where his family lived and could kill them if Heimermann went to the police about the murders.

## C. NEW EVIDENCE OF HEIMERMANN'S INNOCENCE THAT HAS NOT BEEN FAIRLY PRESENTED TO OR CONSIDERED BY A COURT AND WHAT REALLY HAPPENED WHEN THE MURDERS WERE COMMITTED.

In his closing argument at trial, Milwaukee County Assistant District Attorney Jon Reddin argued that evidence of Heimermann's role in the homicides was: Isajiw's "okay" testimony that Heimermann 'agreed' to lure Binwalee and Russell to their deaths; Joanne Danbrova's testimony that she 'heard' a discussion between "the defendant [Heimermann] and Piscitello" and that in the course of that alleged discussion she overheard Heimermann state "in order to get T.C. they would have to go through his body guard" and "[k]ill him;" and homicide detective Vincent Vitale's testimony, who testified about the murder investigation and that "Milwaukee Police Department had no knowledge of this homicide at the time Mr. Piscitello was an informant." (Trial Transcript. Dec. 10, 1991 at 43, 68-72, 103-110.) Accordingly, to undermine the State's case presented at trial, the new evidence of Heimermann's innocence that has not yet been adjudicated by a court would have to attack these categories of evidence.

### 1. Isajiw's "Okay" Testimony.

Isajiw testified twice in this case: first at Piscitello's trial and again at Heimermann's trial. During Heimermann's trial, Isajiw said that he had been going to Milwaukee on a regular basis during the summer of 1989 to purchase cocaine from Binwalee through Piscitello, and that he was taking this cocaine back to customers in Chilton, Wisconsin. (Trial Transcript,

Dec. 10, 1991 at 133-136.) According to Isajiw, Piscitello came up with this plan to kill Binwalee and told Heimermann and Isajiw about it, and that Heimermann "responded" that the plan was "okay." At trial, Isajiw's "okay" testimony concerning Heimermann was unequivocal, testifying as follows:

> Q: Was that clear to you?
>
> A: Yes.
>
> Q: Is there any question in your mind that it was clear to Scott?
>
> A: There's no question about it.

(Trial Transcript, Dec. 10, 1991 at 158.)

Heimermann submits that Isajiw has recanted this unequivocal "okay" testimony -- testimony which was crucial to the State securing these murder convictions against Heimermann.

Isajiw is currently serving his concurrent life sentences at the Racine Correctional Institution in Sturtevant, Wisconsin. In October 1998, Heimermann's private investigator, Thomas Patzer, interviewed Isajiw at the Wisconsin State penitentiary in Waupun, Wisconsin, where he was then housed for the murders of Binwalee and Russell. After that interview, Isajiw sent Mr. Patzer a sworn affidavit dated October 23, 1998 (App. at 198a-202a), where he recants that Heimermann - who he testified he heard say "okay" - had in reality "remained silent" and that he "assumed Mr. Heimermann agreed with the plan and was going to go through with it." (App. at 201a-

202a.) In his closing argument at trial, Reddin explained that the evidence of Heimermann's alleged "expressed willingness" to aid and abet the murders was confirmed by Isajiw's "okay" testimony. (App. at 203a-204a.)

Isajiw's recantation, however, distinctly contradicts the State's evidence that Isajiw "knew" of Heimermann's "expressed willingness" to lure Binwalee and Russell to their deaths.

First, the clarity of the recantation unveils a significant fact that was not obvious at Heimermann's trial: that the State's "okay" theory, that is, Heimermann's alleged consent, complicity or tacit agreement with Isajiw and Piscitello in the murders, was entirely fabricated.

Second, Isajiw's recantation finds corroboration through his testimony at Piscitello's trial, where he never testified that Heimermann did, in fact, respond "okay" to Piscitello's murder plan. (Trial Transcript, Dec. 4, 1991 (*see* the testimony of Joseph Isajiw).)

Thirdly, newly discovered witnesses demonstrate that Isajiw's trial testimony was induced by State officials. According to a police report, Isajiw did not want to get his "relative" involved in the murders, but agreed to make a phone call "if arrangements could be made to leave his relatives out of this matter." (App. at 205a-207a.) Homicide detectives O'Keefe and Paul Stuhmer never obtained the guns used in the murders from Isajiw's relative. Homicide detective James Becker testified at Heimermann's trial that the murder weapons were never recovered because they

were "still around" in possession of Isajiw's "relative." (Trial Transcript, Dec. 11, 1991 at 78-79.)

William N. Gerhartz, who is not involved in this case, is currently serving a twelve-year sentence at the Stanley Correctional Institution located in Stanley, Wisconsin. Mr. Gerhartz provided a sworn affidavit to Heimermann's attorney in March 2007, stating that Isajiw's brother-in-law ('relative') had harbored Isajiw as a fugitive and tutored him on how to get a "deal" before Isajiw turned himself into Milwaukee authorities on April 22, 1991. (App. at 208a-209a.) In light of this new evidence, prosecutorial inducements which protected Isajiw's "relative" in exchange for Isajiw's fabricated "okay" testimony against Heimermann at trial, accompanied by Isajiw's recantation and its corroborating evidence, an entirely new picture of Heimermann's innocence shines through.

**2. Danbrova's "... To Get T.C. ..." Testimony.**

Joanne Danbrova also testified twice in this case: initially at Piscitello's trial, and then again at Heimermann's trial. At Heimermann's trial, Danbrova's testimony was used to give credibility to Isajiw's "okay" testimony regarding the plan to kill Binwalee and Russell. Danbrova claims she heard Heimermann say: "in order to get T.C. they would have to go through his body guard" and "[k]ill him." (Petition at 6 *supra*.) Other than Danbrova's trial testimony that just "defendant [Heimermann] and Piscitello" had the discussion of 'taking out' Binwalee, homicide detective O'Keefe's arrest warrant testimony about Danbrova's statements to him completely

contradict the events of this particular night as described by Danbrova. For example, while Danbrova describes the 'take out' Binwalee through his body guard discussion between Heimermann and Piscitello, O'Keefe described that Danbrova said that Isajiw was also present when the alleged discussion "about ripping TC off and taking TC out" took place, and how Joe Isajiw "made a statement to the effect, don't worry, the basement is soundproof. You can kill somebody and nobody would hear." (App. at 63a.)[2]

Accordingly, Danbrova's trial testimony about Heimermann was inconsistent with her previous characterizations to law enforcement. Further, new evidence has surfaced which impugns Danbrova's trial testimony. Piscitello himself authored numerous consistent recantations. In one sworn affidavit, (*see* App. at 104a, ¶8), Piscitello clearly states that when it came time to discuss "the vivid details of the actual murder plan" Piscitello was unequivocal in stating Heimermann was not present during such discussions regarding Binwalee. As such, even if it is assumed that Danbrova is reporting a different 'to get T.C.' conversation, Piscitello's recantations and Isajiw"s "don't worry, the basement is soundproof .. . you could kill somebody and nobody would hear" statement, makes it more likely that such language was used by

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[2] Like the March 8, 1991 search warrant transcript, the arrest warrant transcript stayed sealed, not becoming a part of the record until March of 1998. (App. at 61a.) Due to these transcripts being withheld by the State, and trial counsels' failure to adequately pursue them before the trial, Heimermann was rendered unable to impeach Danbrova's trial testimony with her previous inconsistent statements.

Piscitello and Isajiw, not between Heimermann and Piscitello.

Danbrova's inconsistencies are resounding fabrications. Motivation for Danbrova's inconsistencies and fabricated testimony can be found in inducements she received from the State in exchange for her testimony, as was done for Isajiw.

Several years after the trial and repeated denials for post-conviction discovery, Heimermann unearthed evidence of the State's extended aid to Danbrova's for her inculpatory testimony against him consisting of Detective Lieutenant Larry Godager's Long Distance Telephone Report (referred to lead homicide detectives O'Keefe and Vitale) documenting the fact that Danbrova "is still incarcerated in Miami on the drug related charges." (App. at 210a.) Yet, the only sort of evidence related to Danbrova's prior criminal history at the trial was when she testified:

> Q. For how long a period of time did you use cocaine?
>
> A. After that evening?
>
> Q. Just in your life. I mean, how - are you using it now?
>
> A. No. I haven't ever since I was - it's been almost two years - a year. Since I've gotten away from them, I haven't used it.

(Trial Transcript, Dec. 10, 1991 at 98; App. at 211a-212a.) But, as of March 27, 1991 Danbrova did, in fact, have criminal charges for drug related offenses that

was known by authorities in both Florida and Milwaukee. Yet, prosecutor Reddin, together with O'Keefe, Stuhmer, Vitale and other Milwaukee law enforcement authorities associated with this case, never disclosed the existing drug crimes to the defense which occurred after August 1989 and pending during the time Danbrova was induced to testify on behalf of the State.

There would have been no evidence more material than the testimony of O'Keefe at the arrest warrant proceeding regarding Danbrova which directly contradicts her testimony at Heimermann's trial, or disclosure of the pending drug charges she was incarcerated in Miami for at around the same time she made these statements to O'Keefe, and the inducements she received for making them. As a whole, this evidence impugns Danbrova's credibility and deflates the State's contentions that Heimermann participated in 'plans' to murder Binwalee and his bodyguard.

**3. Piscitello's Recantation.**

Piscitello was a career informant for Milwaukee law enforcement since the 1970s. (App. at 111a ¶3.) His testimony and credibility were used to start the murder investigation in this case. (App. at 50a-56a, 98a-99a, 120a-121a.)

Piscitello died in September 2006 while serving consecutive life sentences in Portage, Wisconsin. (App. at 215a.) Before he died, Piscitello repeatedly confessed - in sworn affidavits to a news reporter in Milwaukee, to attorneys and investigators within the

Wisconsin Department of Justice[3] and to various federal investigators - that the story told by him and his friends in law enforcement in 1991 about Heimermann's role in the homicides was deliberately fabricated.

In his 1999 and 2002 affidavits, Piscitello essentially states that he and his handlers within Milwaukee Law enforcement purposely exposed Heimermann to the murders via a 'to view real estate' scheme so that Piscitello's handlers could use South 35th Street for drug transactions to get deep inside Binwalee's Black Gangster Disciples organization; then, together, deliberately scapegoated Heimermann for the murders that followed in order to cover up his handlers' negligence and potential complicity in the murders due to their reckless abuse of process which occurred in the war on drugs. (App. at 113a-114a, ¶8, 103a-104a, ¶¶7-8.) Bolstering Piscitello's statement, *infra*, even Assistant District Attorney Karen Christensen at Piscitello's trial argued that Piscitello had been "attracted" to Heimermann because Heimermann "knew how to do real estate deals and business deals." (Trial Transcript, Dec. 4. 1991 at 53-54.) Piscitello's claim of being "attracted" to Heimermann because he "knew how to do real estate deals," then using a real estate scheme to entice Heimermann to buy South 35th Street so his friends in

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[3] The under oath deposition Piscitello gave to attorneys for the Wisconsin Department of Justice in ***Jones 'El v. Berge***, 172 F. Supp. 2d 1128 (W.D. Wis. 2001), disclosed information regarding Milwaukee law enforcement officials handling Piscitello before, during, and after the two murders and information relating to some of the very officers who have now been linked to these murders.

law enforcement could use that house to facilitate their drug investigations against Binwalee square with a March 21, 1991 police report authored by one of Piscitello's Milwaukee Drug Unit handlers, Detective Thomas Gorecki, stating he "had numerous conversations with the confidential informant Eddie' about his aunt [die]ing and his moving into that house [South 35th Street] and that we could use that house for 'deals". (App. at 42a.) Indeed, during the murder investigation itself, homicide detectives confirmed -- via Milwaukee Security Savings bank records -- that Heimermann was mentioned in the files related to South 35th Street, which the bank had an outstanding mortgage on. (App. at 44a-45a.) These bank files establish that Heimermann took possession of South 35th Street during the summer of 1989 from Piscitello's late aunt's estate, thus, confirming law enforcements empowerment of Piscitello as their informant to use the real estate scheme in luring Heimermann to purchase 941 South 35th Street from his late aunt's estate to facilitate their investigation into Binwalee and his organization in the war on drugs.

Moreover, Piscitello recounts that, "[s]everal weeks before the double homicide occurred, I personally learned through my law enforcement handlers that Mr. Binwalee had been arrested by Milwaukee police on a traffic violation, and later, after detective Debraska learned of Mr. Binwalee's arrest, he cut a deal and let him back on the street in order for us to tail him to see what else he would be up to." (App. at 115a, ¶10.) This statement of Piscitello is corroborated by credible information from attorney Ralph J. Sczygelski, who learned of police reports regarding Binwalee's release from jail in 1989, when the Milwaukee County Sheriff's Department first disclosed

the information in response to an open records request in March 2007. (App. at 3a,¶5, 22a-27a.)[4]

To the extent that his present testimony is consistent with what he had previously said at the March 8, 1991 search warrant proceedings, Piscitello never testified that Heimermann, was, in fact, one of the shooters, but merely that he was present at the residence during the shootings. (App. at 50a-55a, 104a, ¶8, 121a, ¶17.)

Heimermann proffers the hearsay confession by Piscitello through Richard Allen Miles. Miles testified that he and Piscitello had several conversations at Columbia Correctional Institution about Piscitello's search warrant and trial testimony in 1991 -- where Piscitello told Miles that any testimony or statements he had given that implicated Heimermann were false, and that Heimermann did not have any advanced knowledge that Piscitello and Isajiw would kill Binwalee and Russell and was in no way involved which would classify Heimermann as an accessory before or after the fact. *See* 1995 Wisc. App. LEXIS 967 at *13.

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[4] Given that Gorecki and Debraska already had enough evidence against Binwalee for criminal drug violations *before* his release from jail in March of 1989, and given that other individuals had been arrested for similar criminal offenses in close proximity to Binwalee *after* his release, (App. at 33a-43a), query why Piscitello's handlers never directly arrested Binwalee since Binwalee already had been a FBI Top Ten Fugitive and wanted by Chicago law enforcement for murder by those dates. (App. at 28a-32a.)

Piscitello and his handlers' motivation to implicate Heimermann at the March 8, 1991 search warrant proceeding, then, was a form of pretextual state official coercion, as it was "rigged to such an extent" to compel "Heimermann's cooperation in testifying against Mr. Isajiw in order to not jeopardize [Piscitello's] role as an undercover government informant and the 1989 drug activity investigations themselves." (App. at 98a, ¶18, 116a,¶12.)

Further, Piscitello possessed additional reasons to fabricate his trial testimony, predicated by his belief that implicating Heimermann in the two murders would help him obtain immunity in the murders, obtain a new identity, relocation and financial assistance from his friends in law enforcement. (App. at 102a-103a,¶6.) Further confirming this point is homicide detective Ronald Castillo, who testified that Piscitello had been placed in protective custody and relocated to Arizona before trial of this case. (Trial Transcript, Dec. 12, 1991 at 24,26.) Additionally, IRS Special Agent Michael Spang's memo dated April 21, 1991 notes that Piscitello asked "how he could get immunity for testimony with respect to the" two murders. (App. at 81a-83a.) The pre-trial notes of Piscitello's attorney indicate that he received money from detectives Castillo, Debraska, and O'Keefe before the trial of this case. (App. at 85a-88a.) Piscitello also claimed that the prosecution promised him post-trial protection. (App. at 127a, ¶25-26.) Because these apparent promises made to him were not kept, Piscitello determined to recant his fabricated testimonies and returned "to the State of Wisconsin in March 2000 and reveal the true occurrence of the August 19, 1989 shootings that Mr. Heimermann could finally begin to present his case." (App. at 128a, ¶26.)

Piscitello's recantations resonate with credibility, as they employ the same power and influential force the State used to obtain search and arrest warrants and the eventual convictions against Heimermann and Isajiw - namely, through the agents whom directed and monitored Piscitello's role as an informant. They, themselves, now corroborate Piscitello's confessions and provide detailed affirmations of the consistencies in Piscitello's new accounts regarding the Binwalee and Russell murders.

Additionally, portions of Dr. Hayes' Psychological Evaluation of Heimermann supports both Isajiw's and Piscitello's recantation. (App. at 183a-197a.) Dr. Hayes, a psychologist licensed in Wisconsin, had examined Heimermann in August 1998. In his Psychological Evaluation, Dr. Hayes opined that Heimermann was suffering "from post-traumatic stress disorder," palpably stemming from Heimermann witnessing the murders, and that Heimermann never engaged in the requisite calculus to ensure that the lives of Binwalee and Russell be taken. (App. at 194a-195a.) As such, Heimermann could not have aided and abetted the commission of malicious murders, and never engaged in the kind of criminal 'cost-benefit analysis' which illustrates the intent to produce death. Stated differently, Dr. Hayes' Psychological Evaluation is the functional equivalent of DNA evidence exonerating Heimermann of a crime: One cannot have the requisite psychological intent to take someone's life and then suffer from post-traumatic stress disorder after having witnessed the deaths of the very people they intended to kill.

Given the above, Dr. Hayes' testimony corroborates both Piscitello's and Isajiw's recantations,

compounding the persuasive force of Heimermann's innocence.

In light of all the above, undisclosed evidence, fabricated testimony, systematic police corruption and coercion, the balance of the State's case against Heimermann is dramatically different from and weaker than the skewed and selective truths presented to the jury at Heimermann's trial.

**4. Other New Evidence That Can Prove Heimermann's Innocence.**

Other new evidence that can prove Heimermann's innocence consists of the "as-yet-undisclosed-state-evidence," Heimermann has yet to receive 18 years after his trial. The latest recantations from Piscitello contain statements given to Detective Debraska and IRS Special Agent Spang in the days following the two murders. In this December 2000 recantation, Piscitello explains to U.S. Treasury Agents Joel Jurkowski and Sharon Jarosz that Debraska was complicit in the murders, and that Debraska had instructed Piscitello to delay reporting the murders because of ongoing drug investigations against Binwalee's organization, Isajiw and confederates in Chilton and others. (App. at 92a-95a, 97a, ¶¶2,7,10,15.) In this recantation, Piscitello also identifies Agent Spang as the law enforcement individual he told this information regarding Debraska. (*Id.* at 93a-96a, ¶¶7-13.) This testimony accords with Spang's own notes; in his April 21, 1991 memo to Assistant District Attorney Jon Reddin, Spang explains that he interviewed Piscitello in January 1991 "at a restaurant in Milwaukee," who then "admitted killing two 'BOS' gang members." (App. at 81a.) Following this interview, Piscitello testifies

that he later met with Reddin, Donohoo, Debraska and O'Keefe, and that together they all "appeared secretly in the Chambers of the Honorable Audrey Y. Brooks, Milwaukee County Court Commissioner," for conducting a sham search warrant proceeding in regard to 941 South 35th Street. (App. at 98a, ¶¶18-19.)

Additionally, parts of retired U.S. Customs Agent Buford Gates' statement written in June 2000, shares how Debraska and his "friend," O'Keefe, (App. at 134a), (who led the homicide investigation after Debraska and Piscitello were working on the drug investigations against Binwalee and his gang) had the motive and opportunity that purposely exposed Heimermann to and deliberately scapegoated him for the homicides through Piscitello. (App. at 132a-144a.) Agent Gates' invitation to this Court is from his June 20, 2000 statement which says: "law enforcement officers and officers of the court have no legitimate reason to lie unless they are covering something up" and that Debraska needed to "reestablish [his] reputation as an effective police officer, a reputation that was fading fast." (App. at 135a.) Attached to his statement, Agent Gates introduced various letters he wrote to Reddin, former Milwaukee Police Chief Phillip Arreola, and former Milwaukee County District Attorney E. Michael McCann regarding the intentional misconduct and cover up of detectives Debraska, O'Keefe and Stuhmer in the two murders after Heimermann was convicted. (App. at 145a-158a, 161a-178a.) Sadly, McCann and Reddin ignored Agent Gates' pleas to address the intentional misconduct of Debraska and associates. (App. at 159a-160a, 179a-182a.)

Therefore, this credible information from Agent Gates and Piscitello's full recantations regarding Debraska's complicity in and cover up of the murders, and Piscitello's various meetings with prosecutors Donohoo and Reddin with Court Commissioner Brooks immediately before the search warrant proceeding, is used to demonstrate that the State of Wisconsin is still in possession of the as-yet-undisclosed-state-evidence, which will serve as a chronology within which to connect the dots that Piscitello and his handlers in law enforcement purposely exposed Heimermann to the murders and then deliberately framed him in those murders, because Debraska's "reputation as an effective police officer" went nova as a result of Piscitello's propensity for violence and murder, making life as an effective police officer in Debraska's Galaxy impossible.

In other words, we now know the as-yet-undisclosed-state-evidence the prosecution deliberately failed to disclose is material as it shows the framing of an innocent man, procuring Heimermann's conviction by misrepresentation and facilitating perjured testimony, and that Debraska and associates knew all along that Heimermann was actually innocent.

### D. THE MOST RECENT PROCEEDINGS BELOW.

Heimermann filed his latest state motion for post-conviction relief on May 10, 2007, asserting the state's continued failure to fully disclose the aforementioned missing documents at trial as well as his deliberate framing-innocence claim. (App. at 9a.) Without holding a hearing or allowing post-conviction discovery, the trial court denied Heimermann's motion on the basis

that Heimermann's contentions were "implausible and based on nothing more than speculation." (App. at 11a.)

Heimermann then appealed the trial court's order denying his post-conviction motion to the Wisconsin Court of Appeals. (App. at 2a.) On appeal, Heimermann argued that the State was still in possession of exculpatory evidence and his deliberate framing-innocence claim. (App. at 4a-5a.) The Wisconsin Court of Appeals affirmed the trial court on July 1, 2008, concluding that because Heimermann's claims had been raised and rejected on previous appeals they were barred by the state's procedural rule in ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W. 2d 157 (1994). (App. at 6a, ¶11 .) Specifically, the court held that because "there is no evidence that Heimermann or his counsel have sought this information before now, or that they were denied access of this information," Heimermann's ***Brady*** claim could not be the subject of appeal. (App. at 6a, ¶11 n. 4.) Second, the court held that under ***State v. Edmunds***, 2008 WI App 33, 308 Wis. 2d 374, 716 N.W. 2d 590, Heimermann's new document request was "insufficient to support such a [deliberate framing-innocence] claim" and was therefore not entitled to post-conviction discovery that he is innocent. (App. at 6a. ¶10 n. 3.) Heimermann then petitioned the Wisconsin Supreme Court for review, again raising his post-conviction discovery and deliberate framing-innocence claims, and asserting for the first time that he a had a due process and Eighth Amendment right to be released upon a showing of actual innocence. The Court denied his Petition on October 15, 2008. (App. at 15a). Heimermann now files this Petition.

## REASONS FOR GRANTING THE WRIT

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." ***Ex Parte Fahey***, 332 U.S. 258, 260 (1947). Title 28 U.S.C. § 2241(b)(3)(E) prevented this Court from reviewing the United States Court of Appeals for the Seventh Circuit's latest order denying Heimermann leave to file a second habeas corpus petition by appeal or writ of certiorari. (App. at 18a-19a.) The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), however, did not repeal this Court's authority to entertain original habeas petitions and that original habeas petitions fall under this Court's appellate jurisdiction. *See* ***Felker v. Turpin***, 518 U.S. 651, 662 (1996). ***Felker*** therefore effectively established an alternative to certiorari for this Court to review the decision of any lower court in the exceptional case. *See Id.* at 661; *see also* Eugene Gressman et al. *Supreme Court Practice* 664 (9th Ed. 2007).

Additionally, Rule 20 of this Court requires a petitioner seeking a writ of habeas corpus to demonstrate that (1) "adequate relief cannot be obtained in any other form or in any other court," (2) "exceptional circumstances warrant the exercise of this power," and (3) "the writ will be in aid of the Court's appellate jurisdiction." Further, in ***Felker***, this Court specifically noted that original petitions must comply with 28 U.S.C. § 2254. *See* 518 U.S. at 662. Here, Heimermann submits that he meets the mandates of § 2254, including those for habeas discovery under Rule 6 of the Rules Governing Section 2254 Cases along with the requirements for an evidentiary hearing under § 2254(e)(2). Because this Petition

pleads a rare and exceptional case, Heimermann requests that this Court invoke its habeas corpus jurisdiction to transfer his Petition to the United States District Court for the Eastern District of Wisconsin for discovery, an evidentiary hearing and determination under this Court's original habeas corpus authority provided by 28 U.S.C. § 2241(b).

## I. STATEMENT OF REASONS FOR NOT FILING IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN.

Rule 20.4(a) states that "to justify the granting of a writ of habeas corpus, the petition must show. . . that adequate relief cannot be obtained in any other form or from any other court." Supreme Court Rule 20.4(a). Although his Petition seeks extraordinary relief despite circumstances born of years of unsuccessful post-conviction litigation, Heimermann's Petition is not barred because those avenues were previously available to him in the courts below. Rather, Rule 20.4 requires that no available avenue for relief remain open to Heimermann, and an appeal from any of the courts below is an unavailable or inadequate remedy. ***Ex Parte Fahey***, 332 U.S. at 260 (requiring that the extraordinary writ issue only if "appeal is clearly an inadequate remedy"); *see also* Gressman, et al., at 653 ("[T]he court will not grant an extraordinary writ where another potential avenue remains open").

Here, Heimermann cannot obtain relief in any other form or in any other court. He did not apply to the district court because the Seventh Circuit has prohibited such an application since February 2003. (App. at 16a-17a.) Heimermann has exhausted his state remedies with respect to his claims when he

appealed to the Wisconsin Court of Appeals and Wisconsin Supreme Court in 2008. (App. at 2a-8a, 15a.) Additionally, the Wisconsin Governor's Pardon Advisory Board denied his application for clemency on September 9, 2009. (App. at 20a-21a.) Since Heimermann exhausted his state remedies and is prohibited by the Seventh Circuit to file a second habeas petition, he cannot obtain relief in any other form or any other court.

## II. HEIMERMANN'S PETITION CLEARLY DEMONSTRATES 'EXCEPTIONAL CIRCUMSTANCES' THAT WARRANT THIS COURT'S DISCRETIONARY POWERS TO GRANT THE ORIGINAL WRIT OF HABEAS CORPUS.

The only reason why Heimermann has been unable to prove his deliberate framing-innocence claim thus far is because the lower courts have repeatedly elevated procedure over justice, without ever permitting Heimermann discovery and an evidentiary hearing to properly evaluate his deliberate framing-innocence claim. Indeed, as Justices Blackmun, Stevens, and Souter noted, "it makes no sense for this Court to impugn the reliability of petitioner's evidence on the ground that its credibility has not been tested when the reason its credibility has not been tested is that petitioner's habeas proceeding has been truncated. . ." ***Herrera v. Collins***, 506 U.S. 390, 445 (1993) (Blackmun, J., dissenting).

The unique set of facts that makes Heimermann's case rare and exceptional is the conduct of law enforcement officers and their career informant purposely exposing Heimermann to murder and then

deliberately framing Heimermann for it – the corrupt criminal trial proceedings and lower state and federal courts continuously entering erroneous orders in denying Heimermann relief and those courts' continuing failure to self-correct this injustice, thus keeping Heimermann in prison, despite evidence of his factual innocence. Accordingly, the nature and the breadth of new evidence Heimermann presents in this Petition demonstrates "exceptional circumstances" that warrant this Court's discretionary powers to avoid a continued life imprisonment without the compliance of due process.

### A. THE CORRUPT CRIMINAL TRIAL PROCEEDINGS AND WISCONSIN COURTS' AND LOWER FEDERAL COURTS' CONTINUED ERRONEOUS RULINGS OVERRIDING HEIMERMANN'S RIGHT NOT TO BE PUNISHED DESPITE CLEAR AND CONVINCING EVIDENCE OF HIS FACTUAL INNOCENCE, DEMONSTRATES AN EXTREME RARITY AND RAISES SERIOUS CONSTITUTIONAL ISSUES.

Heimermann argues that the corrupt criminal trial proceedings and Wisconsin courts' and lower federal courts' continued erroneous rulings denying post-collateral relief based upon procedural hurdles despite clear and convincing evidence of his factual innocence and overriding his right not to be punished demonstrates an extreme rarity and inflicts a cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

Heimermann cites ***In re Davis***, 130 S. Ct. 1, 174 L. Ed. 2d 614 (2009), for the proposition of seeking transfer to the district court on his Petition. This Court transferred the petition in ***In re Davis*** to the district court on the petitioner's freestanding claim of actual innocence. Davis claimed mere presence during an August 19, 1989 murder of a police officer, and the evidence supporting Davis's innocence claim included seven of nine state witnesses who were innocent bystanders recanting their trial testimony, supplemented by four confessions from the alternative suspect. *See* 130 S. Ct. at 1.

The district court in ***In re Davis*** very recently recognized an existing right of the innocent to be released upon the showing of actual innocence. ***In re Davis***, __ F. Supp. 2d __, 2010 U.S. Dist. LEXIS 87340 at *137 (S.D. Ga. 2010) (concluding that "executing the 'actually' innocent violates the cruel and unusual punishment clause of the Eighth Amendment"). In the meantime, moreover, the Ninth Circuit Court of Appeals, in ***Souliotes v. Evans***, 2010 U.S. App. LEXIS 19486 (9th Cir., Sept. 20, 2010), explained that "continuing to incarcerate the 'actually innocent' is just as violative of Eighth Amendment as executing them." 2010 U.S. App. LEXIS 19486 at ** 25-26 n.3 (Zilly, J., dissenting from majority barring Souliotes from pursuing his other Constitutional claims under ***Schlup v. Delo***). This is essentially what this Court announced in ***District Attorney's Office v. Osborne***, 129 S. Ct. 2308, 2321, 174 L. Ed.2d 38 (2009) ("Whether such a federal right exists is an open question. . . In this case too we can assume without deciding that such a claim exists. . .").

Having demonstrated capital and non-capital cases should be given equal treatment upon a showing of innocence, its applicability must be pared with the two subsets of Heimermann's suffering in this case, one focusing on the nature of the outrageous conduct of Milwaukee law enforcement and their long-time informant Piscitello in deliberately framing Heimermann and exposing him to murder, and the other on Fourteenth Amendment violations at trial that have been continued as a result of the lower courts' constant erroneous ruling that are overriding Heimermann's Eighth Amendment right in not being punished.

As to the former subset, federal courts have considered existence of Heimermann's contentions to be exceptional and deserving special treatment in the interest of justice. The less than hand full of cases which most parallel the factual predicate for Heimermann's innocence claim have resulted in the courts calling such law enforcement behavior "egregious" and "outrageous." *Compare* ***Devereaux v. Abbey***, 263 F.3d 1070, 1074-75 (9th Cir. 2001) (en banc) ("there is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government"); *with* ***Limone v. United States***, 579 F.3d 79, 108 (2009) (holding that outrageous conduct of FBI agents and their long-time informant "stooped too low" in taking down organized crime and "its misconduct resulted in severe harm to the persons wrongfully convicted and to their families"); *and* ***Litif v. United States***, 2010 U.S. Dist. LEXIS 7493 at *72 (D. Mass. 2010) (concluding that FBI agents and their long-time informant "stooped too low as simply to disregard its fundamental legal

obligation of insuring domestic tranquility to all its citizens equally. Instead, having apparently writing these folks off as assorted 'low-lifes,' it proceeded to frame innocents . . . and knowingly exposed other innocents to murder"). Accordingly, this illustrates that Heimermann's claim of actual innocence is coupled with his Fourteenth Amendment deliberate framing-innocence claim, as per the analysis required under 28 U.S.C. § 2244 (b)(2)(B)(ii); ***House v. Bell***, 547 U.S. 518 (2006) and ***Schlup v. Delo***, 513 U.S. 298 (1995).

The latter subset turns on the culpability of Heimermann in the murders, combined with the continued erroneous rulings of the lower courts that effects his continued punishment.

Unlike ***In re Davis***, Heimermann's Petition confirms that "all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility, that would govern at trial" ***House v. Bell***, 547 U.S. 518, 538 (2006), would show innocence. With the two recantations of Isajiw and Piscitello and transcripts of Piscitello's testimony at the search warrant proceedings; the inconsistencies between homicide detective O'Keefe's testimony at the arrest warrant proceeding about Danbrova's statements and her later trial testimony regarding Heimermann that would be new evidence and tantamount to a recantation; as well as the combined statements of the new non-recantation witnesses, (Petition at 6-20 *supra*), as a whole, would clearly diminish the reliability of the murder investigation that was presented at trial and demonstrate "the ghost of the

innocent man convicted." ***United States v. Garsson***, 219 F. 646, 649 (S.D.N.Y. 1923) (Learned Hand, J).

Therefore, the ***In re Davis*** consensus is that the State of Wisconsin has no legitimate interest in keeping Heimermann in prison when he has a total lack of culpability in the homicides, which is demonstrated through a showing of factual innocence based on evidence discovered subsequent to a procedurally corrupt process and unfair trial. ***In re Davis***, __ F. Supp. 2d __, 2010 U.S. Dist. LEXIS 87340 at *134 (recognizing that "deterrence is not served in the case of the innocent convict because there is no conduct to deter"). Yet, Heimermann's showing of factual innocence has not resulted in state relief by clemency or judicial process. (App. at 1a-15a, 20a.) That is to say, the "more than twenty postconviction motions"[5] actually demonstrates that Wisconsin officials continually refuse to admit their mistakes and to rectify them for Heimermann so he can clearly establish his innocence of the underlying murders based upon evidence discovered subsequent to the procedurally corrupt process and unfair trial they provided him. *See e.g.*, ***Watkins v. Miller***, 92 F. Supp. 2d 824, 836 (S.D. Ind. 2000) ("In an effort to keep Jerry Watkins in prison, the state has clung to this theoretical possibility. A close look at this possibility shows it is farfetched, both as a matter of science and in terms of the overall evidence in the case. The theoretical possibility is also completely inconsistent with the theory of the case that the prosecution presented to the jury").

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[5] App. at 2a, ¶3.

In addition to the State of Wisconsin having no legitimate interest in keeping Heimermann in prison, the Wisconsin courts' and lower federal courts' continued erroneous rulings by denying post-collateral relief to Heimermann has been kept from having Piscitello give live testimony in court (as Piscitello died in 2006), thereby destroying the full impact and value Piscitello's testimony would have possessed at the evidentiary hearing Heimermann has consistently requested. The significance of that is, in determining Heimermann's innocence, affidavits are disfavored because affidavit statements are obtained without the benefit of cross-examinations and an opportunity to make credibility determinations. ***Herrera***, 506 U.S. at 417. This prejudice counts several fold where, because Piscitello and his law enforcement handlers wrongly exposed Heimermann to murder and then scapegoated him in those very homicides, Heimermann is further prejudiced because as a result of the state courts' continued erroneous rulings, Heimermann can no longer have Piscitello give live testimony in court, subject even to cross-examination which would more clearly define the statements he's made in his affidavits that completely exonerate Heimermann in the murders of Binwalee and Russell, and which recantations detail the corrupt criminal trial proceedings in this case.

In addressing the Wisconsin courts' continued erroneous ruling denying Heimermann relief, the approach is three-fold: (1) Milwaukee County Court Commissioner Audrey Brooks' erroneous order at the May 15, 1991 preliminary hearing regarding Heimermann's denied access to the transcript of the search warrant proceeding; (2) trial court's order in May 2007 denying post-conviction relief and discovery;

and (3) Wisconsin Court of Appeals' July 2008 decision denying Heimermann's post-conviction discovery and deliberate framing-innocence claims.

First, Commissioner Brooks, after having presided over the search warrant proceedings, was unwittingly co-opted into playing an active role in the Milwaukee D.A.'s office misuse of the criminal justice system to wrongfully prosecute Heimermann and in refusing Heimermann pre-trial and trial access to the transcript of the search warrant proceedings so that Heimermann could adequately challenge the State's witness testimony at the preliminary hearing and the illegality of the prosecution itself.

Attorney Peter Flessas represented Heimermann at the preliminary hearing on May 15, 1991. Flessas moved Brooks to release the allegedly still-sealed transcript of the search warrant proceedings "to properly prepare for preliminary hearing" as it "might also lead to dismissal of this case." (App. at 70a-80a.) Flessas relied upon the plain language of Wis. Stat. §§ 968.21[6] and 968.17[7] to justify his argument for the "sealed" transcript.

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[6] Section 968.21, Wis. Stats., states, in relevant part: "A search warrant shall be issued with all practicable secrecy, and the complaint, affidavit or testimony upon which it is based shall not be filed with the clerk or made public in any way *until the search warrant is executed*."

[7] Subsection 2 of Section 968.17, Wis. Stat., states, in relevant part: . . . . "An affidavit or complaint made in support of the issuance of the warrant and the *transcript of any testimony taken* shall, be filed with the clerk within 5 days after the date of the execution of any search warrant.

What Flessas apparently did not know was that Brooks' own Court Reporter, Jan Johnson, had already transcribed that March 8, 1991 search warrant hearing just three days after Brooks ordered the transcript sealed. (App. at 60a.) Therefore, Flessas requesting Brooks' order at the preliminary hearing was unnecessary to require the transcript consideration by Brooks.

In other words, Commissioner Brooks' Court Reporter presumably recognized that the plain language of § 968.17 both permitted and required her to produce a transcript of the search warrant proceeding without waiting for a court order.

Despite the plain language of §§ 968.17 and 968.21, Wis. Stats, Commissioner Brooks, at A.D.A. Christensen's insistence, misapplied the statutes meanings and rejected Flessas' request on the basis that he could not provide the court with "case law" to legitimize the production of a sealed hearing's evidence prior to trial. (App. at 71a-74a.) Such an erroneous ruling prejudiced Heimermann's ability to assert an outrageous government conduct claim at the preliminary hearing - where such a claim should be raised[8] - and ultimately deprived Heimermann of impeachment evidence at his trial, where such

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[8] *See* ***State v. Steadman***, 152 Wis. 2d 293,448 N.W. 2d 267 (Wis. Ct. App. 1989) and ***People v. Auld***, 815 P. 2d 956 (Colo. Ct. App. 1991), ***cert. denied***, 502 U.S. 1092 (1992). Such a defense is supported by the transcript of the search warrant proceeding in which Piscitello's recantations verifies what to have initiated the factual basis of such a defense, and who Flessas could have called to the stand at the preliminary hearing would confirm such a defense existed. (App. at 50a-55a, 98a, ¶18, 104a, ¶8, 112a-113a, ¶¶7-8.)

transcripts were never furnished to the defense by the State, despite the fact that after the bind-over Commissioner Brooks granted Flessas' request to have them unsealed, (App. at 78a, 80a) and Heimermann's newly appointed trial counsel requested these transcripts before trial. (App. at 219a.)

Second, the trial court in 2007 in denying Heimermann access to the as-yet-undisclosed-state evidence held that such "evidence that police somehow caused the murders to occur is not consequential to the issue of whether the defendant as a party to a crime, intentionally committed the act." (App. at 13a.) However, this documentation Heimermann seeks is 'consequential' because it will contradict Vitale's testimony at trial that the "Milwaukee Police Department had no knowledge of [the two homicides] at the time of Mr. Piscitello was an informant," will be used to factually demonstrate the corrupt process in Heimermann's case and the unreliability of the State's "evidence" of Heimermann's alleged role in the murders, as well as to impugn the credibility of every witness the State presented in their case. *See* ***Kyle v. Whitley***, 514 U.S. 419, 447 (1995) (holding that the proffered evidence was relevant "to throw the reliability of the investigation into doubt and sully the credibility of" the lead detective on the case). Further, the pure record underlying this case flatly says the opposite to the trial court's "possibilities and wild speculations" context. (App. at 13a.) The recantations of Piscitello and other corroborating evidence offers credible evidence to Piscitello was on the 'inside' and part of the very government that went about framing Heimermann to cover up the government's ineptness in causing the two murders in the war against Binwalee and his organization. (Petition at 12-19

*supra*.) Therefore, these claims are sufficiently detailed enough for obtaining the as-yet-undisclosed-state-evidence pertaining to this case, in conjunction with proving Heimermann's innocence.

Third, the Wisconsin Court of Appeals denied Heimermann's 2008 appeal on the basis that "there is no evidence that Heimermann or his counsel have sought this information [as-yet-undisclosed-state-evidence] before now, or that they were denied access to this information." (App. at 6a, ¶11 n. 4.) However, it matters not whether Heimermann or his attorney requested the new documents or that they were denied access of this information; the state prosecution in this instance had a duty to turn over *all potentially exculpatory evidence in its possession in 1991. See* ***United States v. Agurs***, 427 U.S. 97, 106-07 (1976). Moreover, as noted above, by Attorney Flessas requesting the transcript of the search warrant proceeding that was denied to the defense shows the Wisconsin Court of Appeals' ruling to be factually erroneous as that information had in fact been requested but denied to counsel. It also matters not whether Heimermann's claims may have been brought up during past years of unsuccessful post-conviction litigation. (App. at 6a, ¶11 n.4) The State of Wisconsin's deliberate suppression of exculpatory evidence of Heimermann's factual innocence at trial and its repeated procedural objections have precluded adequate court review of the merits of Heimermann's innocence claim. Insofar as the Wisconsin Courts of Appeals' "successive claim" rationale in Heimermann's case, this Court has rejected such logic in ***Cone v. Bell***, 129 S. Ct. 1769, 1781 (2009) (holding that a federal court is not barred from considering a

prisoner's claim that a state court declines to consider because it had been presented and rejected previously).

As to the lower federal courts' continual erroneous rulings of overriding innocent Heimermann's Eighth Amendment right in not being punished, according to the Seventh Circuit's November 26, 2002 order denying Heimermann's "eighth" successive petition for collateral review, Piscitello's recantation "does not explicitly repudiate his testimony that he saw Heimermann standing over his victim holding a gun almost immediately after they were shot." (App. at 19a.) The Seventh Circuit's findings are a gross misleading mischaracterization of the facts. First, in his search warrant testimony, Piscitello testified that Heimermann was merely present at the shooting. (App. at 50a-54a.) *See* ***State v. Rundle***, 176 Wis. 2d 985, 995, 1005-1106, 500 N. W. 2d 9 16 (1993) (standing by and doing nothing while crime is committed does not constitute aiding and abetting). Second, in his recantations, Piscitello explicitly and completely exonerates Heimermann in the shootings. (App. at 104a, ¶8, 112a-113a, ¶¶7-8.) Given that the Seventh Circuit's findings are so clearly unsupported by the record, they are actually contrary to the State's theory of the case, i.e., that Heimermann was *not* one of the shooters. (App. at 204a).

Finally, noted by the Questions Presented (*see, e.g.*, Petition at i-ii), Petitioner argues that the entire criminal process of this case was corrupt from its onset: This Court can make this conclusion because the executive branch through the Milwaukee D.A.'s office co-opted the judiciary into performing the March 8, 1991 search warrant proceeding in order to gain evidence about murders Milwaukee law enforcement

already knew were committed 19 months earlier via Piscitello's confession to IRS Agent Spang. (App. at 98a, ¶18, 116a, ¶12, 81a.) The search warrant proceedings "were therefore rigged to such an extent that they were a proceeding in name only." (App. at 98a, ¶18.) The purpose was to then obtain the evidence necessary through which Petitioner could be compelled through State coercion to provide "testimony as part of the prosecution" against Isajiw "in order to not divulge [Piscitello's] undercover role or the drug investigations themselves." (App. at 116a, ¶12.) When Petitioner stymied attempts by law enforcement to gain his cooperation from Florida against Isajiw in order to protect Piscitello's identity, the Milwaukee D.A.'s office again co-opted the judiciary to conduct the April 15, 1991 arrest warrant proceeding. Piscitello's recantation asserts that the Milwaukee D.A.'s office commenced the arrest warrant proceeding because "Mr. Heimermann decided against" helping prosecute Isajiw, "thereby igniting controvercy [sic] about whether we had enough information to arrest and prosecute Isajiw without jeopardizing [Piscitello's] undercover role and the drug investigations themselves." (App. at 117a, ¶12.) This would undermine the probable cause basis for the arrest warrant against Petitioner, and hence negate legitimacy of *any* subsequent criminal proceedings against Petitioner in this case. *See* ***Mooney v. Holohan***, 294 U.S. 103, 112 (1935). (Due process "is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured."). Stated more accurately than what

Attorney Flessas had been able to argue at the May 15, 1991 Preliminary Hearing, Flessas diligently sought to dismiss with prejudice the entire criminal prosecution against Petitioner by requesting Commissioner Brooks to allow him access to the search warrant transcript (Petition at 31 supra), so that Petitioner could present this evidence of corrupt criminal process, which he has done in this Petition.

## CONCLUSION

In light of the foregoing, Heimermann's Petition should be transferred for production of the aforementioned 'as-yet-undisclosed state-evidence,' an evidentiary hearing and determination to the United States District Court for the Eastern District of Wisconsin, pursuant to 28 U.S.C. § 2241(b). Fairness and the Constitution demand that this injustice be rectified.

Dated this 29th of October, 2010

Respectfully Submitted,

Scott Alan Heimermann
200 South Madison Street
P.O. Box 0351
Waupun, Wisconsin 53963-0351
Tel: 920-321-1156

*Petitioner Pro se*

## VERIFICATION

Scott Alan Heimermann, as an incarcerated individual, and in the absence of immediate notary service, hereby declares the foregoing Petition under penalty of perjury, pursuant to 28 U.S.C. § 1746 and 18 U.S.C. § 1001: that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true.

Dated this 29th day of October, 2010.

**BY:** Scott Alan Heimermann

# APPENDIX

# APPENDIX

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## APPENDIX A

2008 WI App 135; 313 Wis. 2d 831; 756 N.W.2d 810;
2008 Wisc. App. LEXIS 517

**COURT OF APPEALS OF WISCONSIN,
DISTRICT ONE**

**Appeal No. 2007AP1518**

**Filed July 1, 2008
Decided July 1, 2008**

| | |
|---|---|
| STATE OF WISCONSIN, | ) |
| | ) |
| PLAINTIFF-RESPONDENT, | ) |
| | ) |
| v. | ) |
| | ) |
| SCOTT ALAN HEIMERMANN, | ) |
| | ) |
| DEFENDANT-APPELLANT. | ) |
| | ) |

Appeal from orders of the circuit court for Milwaukee County: Jacqueline D. Schellinger and Timothy G. Dugan, Judges. Cir. Ct. No. 1991CF911618A.

Before Curley, P.J., Fine and Kessler, JJ.

**OPINION**

¶1 PER CURIAM. Scott A. Heimermann appeals from an order denying his motion for postconviction relief and an order denying his motion for reconsideration. Heimermann argues that the trial court erred in that it did not properly consider the information submitted by Heimermann as newly discovered evidence that would result in a different outcome at trial. Because Heimermann's claims have been raised in previous appeals and are procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis.2d 168, 517 N.W.2d 157 (1994), we affirm.

**BACKGROUND**

¶2 In 1992, Heimermann was sentenced to two consecutive life sentences after a jury found him guilty of two counts of first-degree intentional homicide as party to a crime. At trial, he argued that he was innocent as he only went along with the crime because he was afraid of his co-defendant's connections to the police and mafia and was, therefore, afraid to turn him in. In his various appeals Heimermann has argued that his co-defendant was a government agent and set him up, that the government and police department are setting him up, and that the police covered up the murder investigation to protect his co-defendant, who was an informant.

¶3 Since Heimermann's conviction, he has filed more than twenty postconviction motions. Previously, Heimermann filed two WIS. STAT. § 974.06 (2005-06)

motions,[1] numerous motions requesting a new trial, a malpractice lawsuit against his trial attorney, and petitions for writs of *habeas corpus*.

¶4 In May 2007, Heimermann filed a postconviction motion requesting a new trial, appointment of counsel, and postconviction discovery to search through the files of the Milwaukee Police Department. He contends that these files contain evidence that was deliberately withheld and that this evidence constitutes "newly discovered evidence" entitling him to a new trial, in that it would lead to a different outcome.

¶5 Specifically, Heimermann argues that he has recently discovered evidence that the Milwaukee Police Department arrested and released Muhammad "T.C." Binwalee in March 1989, five months before he was killed by Heimermann's co-defendants, even though Binwalee was wanted by authorities in Illinois and the FBI had issued a warrant for his arrest. Heimermann contends that Binwalee's arrest and release is evidence of the Milwaukee Police Department's overall conspiracy to frame him for the murder of Binwalee and Binwalee's associate.

¶6 The trial court denied Heimermann's motion, ruling that his "claim of newly discovered evidence does not pass muster, that he is not entitled to postconviction discovery, and that his petition for

---

[1] Heimermann's first WIS. STAT. § 974.06 motion was filed on August, 9, 1992. His second § 974.06 motion was filed on September 24, 1996.

All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

postconviction relief is conclusory and without the requisite factual support." The trial court found that Heimermann was not entitled to postconviction discovery under ***State v. O'Brien***, 223 Wis.2d 303, 588 N.W.2d 8 (1999), because he did not show that the evidence was consequential to an issue in the case or that the result of the proceeding would have been different. The trial court also found Heimermann's theories and conclusions to be "implausible and based on nothing more than speculation." Heimermann appeals.

**DISCUSSION**

¶7 On appeal, Heimermann argues that the trial court did not properly consider his new evidence and that a reasonable probability exists that a different result would be reached in a new trial. The State argues that the trial court correctly denied Heimermann's motion for a new trial based on newly discovered evidence and asks the court to impose sanctions for a frivolous appeal. As noted above, the trial court ruled that Heimermann's motion did not provide enough support to grant him postconviction relief.

¶8 In reviewing whether a claim based on a statute is procedurally barred, this court reviews the case *de novo*. ***Minuteman, Inc. v. Alexander***, 147 Wis.2d 842, 853, 434 N.W.2d 773 (1989). A reviewing court may uphold a lower court's decision "on a theory or on reasoning not presented to the lower court." ***Liberty Trucking Co. v. DILHR***, 57 Wis.2d 331, 342, 204 N.W. 2d 457 (1973).

¶9 WISCONSIN STAT. § 974.06 requires a "prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation." ***Escalona***, 185 Wis. 2d at 185,A court may consider issues not raised in a prior motion if the court finds "that a 'sufficient reason' exist [ed] for either the failure to allege or to adequately raise the issue in the original, supplemental or amended motion." ***Id.*** at 181-82.

¶10 The evidence and theory Heimermann now claims to have found could have been, and has been, brought up during earlier appeals. The evidence Heimermann claims to have recently discovered occurred in 1989, months before the crime he was convicted and sentenced for was committed, and two years before his trial. Heimermann argues that this evidence shows the Milwaukee Police Department and one of its detectives released Binwalee from custody because they wanted to build a case against Binwalee and his gang, and this action then led to Heimermann being framed for a murder by the same parties. In previous appeals, Heimermann argued that he is the victim of a conspiracy by federal and local law enforcement officials to frame him for this crime,[2] and that the Milwaukee Police Department knew about Binwalee's Illinois and FBI warrants but was more interested in helping a confidential informant, who was also Heimermann's co-defendant, learn from

---

[2] The trial court dismissed Heimermann's motion, and the dismissal was upheld by this court.

Binwalee about drug trafficking and other crimes taking place in Wisconsin. Throughout his trial and subsequent postconviction motions and appeals, Heimermann has attempted to argue his case in numerous ways, and his current argument does not differ substantially from theories he has put forth before.[3]

¶11 Under ***Escalona***, claims which could have been raised in a prior postconviction motion or appeal and were not are procedurally barred unless a sufficient reason for failing to raise the issue is presented. ***Escalona***, 185 Wis. 2d at 185. The information Heimermann identifies as new evidence existed before his trial and could have been discovered and argued before now. Heimermann does not provide a sufficient reason for failing to raise the issue before now.[4]

---

[3] During his appeal, Heimermann filed with this court a letter pointing to supplemental authority. Heimermann claims that ***State v. Edmunds***, 2008 WI App 33, 308 Wis. 2d 374, 746 N.W.2d 590, supports his claim that he is entitled to a new trial because he has discovered new evidence of corruption in the Milwaukee Police Department. However, because Heimermann has argued before that the police are corrupt and responsible for framing him for a murder, and because the evidence he has presented is insufficient to support such a claim, he is not entitled to a new trial under ***Edmunds***.

[4] Heimermann argues that he was unable to produce the evidence before now because it was being withheld by the State and the Milwaukee Police Department. However, there is no evidence that Heimermann or his counsel have sought this information before now, or that they were denied access to this information.

¶12 In its brief, the State asks us to impose sanctions on Heimermann to prevent him from filing more frivolous appeals. Under WIS. STAT. § 809.25(3),[5] this court has the power to sanction a party for filing a frivolous appeal. While we agree that Heimermann has filed numerous motions and appeals

---

[5] The full text of WIS. STAT. § 809.25(3) reads:

> FRIVOLOUS APPEALS. (a) If an appeal or cross-appeal is found to be frivolous by the court, the court shall award to the successful party costs, fees, and reasonable attorney fees under this section. A motion for costs, fees, and attorney fees under this subsection shall be filed no later than the filing of the respondent's brief or, if a cross-appeal is filed, no later than the filing of the cross-respondent's brief. This subsection does not apply to appeals or cross-appeals under s. 809.107, 809.30, or 974.05.
>
> (b) The costs, fees and attorney fees awarded under par. (a) may be assessed fully against the appellant or cross-appellant or the attorney representing the appellant or cross-appellant or may be assessed so that the appellant or cross-appellant and the attorney each pay a portion of the costs, fees and attorney fees.
>
> (c) In order to find an appeal or cross-appeal to be frivolous under par. (a), the court must find one or more of the following:
>
> 1. The appeal or cross-appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.
>
> 2. The party or the party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

that have lacked merit, at this time we will not impose sanctions.

By the Court. --Orders affirmed.

## APPENDIX B

**STATE OF WISCONSIN**
**CIRCUIT COURT**
**Branch 10**
**MILWAUKEE COUNTY**

**Case No. 91CF911618**[1]

**[Filed May 14, 2007]**

| | |
|---|---|
| STATE OF WISCONSIN, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| vs. | ) |
| | ) |
| SCOTT A. HEIMERMANN, | ) |
| | ) |
| Defendant. | ) |
| | ) |

---

## DECISION AND ORDER DENYING MOTION FOR POSTCONVICTION DISCOVERY, MOTION FOR APPOINTMENT OF COUNSEL

---

[1] The motions were also filed in case F-911492; however, case F-911492 was dismissed. Because the defendant is not serving a sentence in conjunction with F-911492, he is not entitled to file a motion for postconviction relief in that case.

**AND MOTION FOR POSTCONVICTION RELIEF**

---

On May 10, 2007, the defendant filed his twenty-second motion for postconviction relief,[2] accompanied by a motion for postconviction discovery and a motion for the appointment of counsel for purposes of a postconviction hearing. The case was assigned to this court for review because the Hon. David A. Hansher is no longer in the felony division. The court has reviewed the motions filed by the defendant and finds that his claim of newly discovered evidence does not pass muster, that he is not entitled to postconviction discovery, and that his petition for postconviction relief is conclusory and without the requisite factual support.

Before a new trial may be awarded based on a claim of newly discovered evidence, the defendant must demonstrate (1) that new evidence was discovered after the trial; (2) that the defendant not negligent in failing to discover the evidence before trial; (3) that the evidence is material; (4) that the evidence is not cumulative; and (5) that there exists a reasonable probability of a different result at a new trial. State v. Coogan, 154 Wis.2d 387, 394-95 (1990); State v. Boyce, 75 Wis.2d 452, 457 (1977). Even if the defendant satisfied the first four of the general requirements, the proffered evidence does not

---

[2] The defendant indicates he is filing his petition for postconviction relief under section 901.03(4), Stats., which is an evidentiary statute and not a statute which provides a method of filing a motion for postconviction relief. The court will construe the defendant's petition under section 974.06, Wis. Stats.

demonstrate that it is reasonably probable a different result would be reached in a new trial. Nor does it support his request for postconviction discovery.

The theories and conclusions asserted by the defendant in his motion are implausible and based on nothing more than speculation. His "newly discovered evidence" consists of information about an arrest made by the Milwaukee Police Department in March of 1989 of one of the homicide victims in this case, who was a drug dealer from Chicago named Muhammad Binwale with an alias of Anthony Bryant. Bryant was arrested for battery on March 21, 1989 and released because a complaint didn't issue. The defendant has also recently obtained information that an unlawful flight warrant issued for Binwale out of Illinois by federal authorities on June 29, 1989 based on Binwale's involvement with a homicide in Illinois. In his motion for postconviction discovery, the defendant seeks additional information about Binwale's arrest (among other things).

The homicide in F-911618 occurred in August of 1989. Heimermann's co-defendant Piscitello had been working as an informant for Milwaukee police with the drug unit, and it is part of Heimermann's theory that the police department's release of Binwale in March of 1989 enabled Detective Debraska and Detective Gorecki "to pursue their then-ongoing drug investigations against Binwalee[sic] and his Black Gangster Disciples." (*Petition for Postconviction Relief p. 5*). It is further a part of Heimermann's highly speculative theory that the actions of the Milwaukee Police Department led to the murder of Binwale and his associate and that this "new evidence" would have "supported the defense contention that Milwaukee police framed [the defendant] in the murders in order

to cover up their own involvement in the murders." (*Petition for Postconviction Relief; p. 16*).

In this vein, the defendant also seeks post-conviction discovery pertaining to the personnel records and logs of Detectives Debraska and Gorecki (and also about the police department's knowledge of himself during 1989) because he claims that the lack of testimony from Debraska and Gorecki at his trial violated his constitutional right to compulsory process for obtaining witnesses in his favor. Although he concedes that Debraska and Gorecki would have been hostile witnesses, he believes that police department records would establish that they either had a hand in setting up the murder of Binwale or had knowledge of what would occur. Consequently, he would like to review police department records to see if he can locate favorable evidence which would support his frame- up defense claim.

The "new evidence" offered by defendant in his motion provides *no* support for either his post-conviction claims or his motion for postconviction discovery. Even though he maintains that post-conviction discovery is necessary to develop his frame-up theory, postconviction discovery is not warranted under State v. O'Brien, 223 Wis. 2d 303 (1999). O'Brien requires a defendant to show that the evidence is both consequential to an issue in the case and, had the evidence been discovered, the result of the proceeding would have been different. "' The mere possibility that an item of undisclosed information might have helped the defense . . . does not establish '[a consequential fact]' in the constitutional sense."' United States v. Agurs, 427 U.S. 97, 109-110 (1976).

O'Brien requires a strong showing of success based on the particular postconviction evidence sought.

The court fails to perceive any connection with a frame-up theory – a theory which is predicated entirely on possibilities and wild speculation -- and the specific finding made by the jury in this case, to wit, whether the defendant as a party to a crime intentionally took the life of the victims. In this respect, evidence that police somehow caused the murders to occur is not consequential to the issue of whether the defendant, as a party to a crime, intentionally committed the act. Consequently, the defendant's postconviction discovery motion, which the court considers in conjunction with his petition for postconviction relief, does not demonstrate a "strong showing of success" pursuant to the standard set forth in O'Brien, and therefore, this court is not going to permit the defendant to conduct a fishing expedition to support vague suppositions about Milwaukee police activities. The claims set forth in defendant's petition for postconviction relief constitute wild allegations, and the "new evidence" submitted by the defendant is not supportive of those theories in any respect. Heimermann's motion for postconviction discovery is denied *in toto,* as well as his petition for postconviction relief and his motion for appointment of counsel.

**THEREFORE, IT IS HEREBY ORDERED** that the defendant's motion for postconviction discovery, motion for the appointment of counsel, and petition for postconviction discovery are **DENIED.**

Dated this 14th day of May, 2007, at Milwaukee, Wisconsin.

BY THE COURT:

TIMOTHY G. DUGAN
Timothy G. Dugan
Circuit Court Judge

## APPENDIX C

2008 WI 124; 314 Wis. 2d 282; 758 N.W.2d 926; 2008 Wisc. LEXIS 914

**SUPREME COURT OF WISCONSIN**

**No. 2007AP1518**

**[Filed October 15, 2008]**

State )
)
v. )
)
Heimermann )
)

NOTICE: Decision without published opinion

**OPINION**

*Petition for Review Denied.*

## APPENDIX D

**United States Court of Appeals**
**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted January 10, 2002
Decided February 4, 2002

Before

Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. DANIEL A. MANION, *Circuit Judge*
Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 02-4033

| | |
|---|---|
| SCOTT A. HEIMERMANN, *Applicant*, | ) |
| *v.* | ) |
| GARY R. McCAUGHTRY, *Respondent*. | ) |

On Response to Show Cause Order

**ORDER**

Scott Heimermann has responded to this court's December 13, 2002 order instructing him to show cause why we should not sanction him for repeated

frivolous filings attacking his Wisconsin murder conviction. Only one argument in his thirty-page brief bears minimal discussion. Heimermann's case is obviously distinct from *In re Byrd*, 269 F.3d 8585 (6th Cir. 2001). Heimermann's proposed claim does not rely on evidence even remotely as damaging to his conviction as someone else's confession and, as opposed to Byrd, he did file a petition for rehearing, which, as he himself recognized in that petition, is expressly prohibited by § 2244(b)(3)(E). These overriding distinctions establish that Heimermann's reconsideration motion was blatantly frivolous and not brought in good faith.

Accordingly, we impose the following SANCTION. We fine Heimermann $5,000 and, until he pays the fine, any papers submitted on his behalf will be returned unfiled with the exception of criminal cases and habeas corpus petitions not challenging his 1991 Wisconsin murder conviction.

## APPENDIX E

**United States Court of Appeals**
**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted November 19, 2002
Decided November 26, 2002

Before

Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. DANIEL A. MANION, *Circuit Judge*
Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 02-4033

| | |
|---|---|
| SCOTT A. HEIMERMANN, | ) |
| *Applicant*, | ) |
| | ) |
| *v.* | ) |
| | ) |
| GARY R. McCAUGHTRY, | ) |
| *Respondent*. | ) |
| | ) |

On Motion for an Order Authorizing the
District Court to Entertain a Second or
Successive Petition for Collateral Review

## ORDER

Scott Heimermann has filed his eighth application pursuant to 28 U.S.C. § 2244(b)(3), seeking authorization to file a second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254. Until recently Heimermann was subject to a 1997 Alexander bar for repeatedly filing frivolous applications. Giving Heimermann the benefit of the doubt, we resolve his present application, but WARN him that sanctions can again be imposed for future frivolous filings.

Heimermann proposes a collateral attacked based on newly discovered evidence of his innocence. His submissions, however, do not even remotely suggest his innocence; rather, they obliquely imply police misconduct regarding promises made to a confidential informant, who happened also to be one of Heimermann's codefendants. Even the CI's affidavit does not explicitly repudiate his testimony that he saw Heimermann standing over his victims holding a gun almost immediately after they were shot. Accordingly, we DENY Heimermann's application for permission to file a second collateral attack.

## APPENDIX F

JIM DOYLE
GOVERNOR
STATE OF WISCONSIN

September 9, 2009

Mr. Scott Heimermann # 159200
PO Box 351
Waupun, Wisconsin 53963

Dear Mr. Heimermann:

After careful consideration, your request for an Eligibility Rule Waiver is denied. Each year the Governor's Pardon Advisory Board receives hundreds of applications for Eligibility Rule Waivers. Waivers to the eligibility rules are only granted in a very small percentage of cases where extraordinary circumstances exist. You may re-apply for a waiver 18 months after the date of this letter.

Sincerely,

/s/ Susan Crawford
Susan Crawford

Chair of the Governor's Pardon Advisory Board

P.O. Box 7863, Madison, Wisconsin 53707-7863
♦ (608) 266-1212 ♦ FAX: (608) 267-8983 ♦
WWW.WISGOV.STATE.WI.US



SCZYGELSKI LAW FIRM, LLC.
1131 South 8th Street
Manitowoc, Wisconsin 54220-5309
(920) 682-9990 Fax: (920) 682-6371
E-Mail: ralphlaw@lakefield.net
Ralph J. Sczygelski
Eric R. Pangburn
Samantha J. Shallue, Legal Assistant
Kay L. Landt, Legal Assistant

February 22, 2007

Open Records Department
**Milwaukee Sheriff's Department**
Safety Building, Room 107
821 West State Street
Milwaukee, WI 53233-1488

Dear Sir/Madame:

Per the Open Records Law, including but not necessarily limited to Chapter 19 of the Wisconsin Statutes, I am requesting, on behalf of Scott Heimermann, any and all records that the Milwaukee Sheriff's Department has for Anthony Charles Bryant, Anthony Howards, Anthony Howard, and Tony Charles from June 30, 1989 to August 19, 1989. Enclosed is a check for $25.00 to pay for the copying of any such records.

Please feel free to contact me if you have any questions or concerns regarding this.

Sincerely,
SCZYGELSKI LAW FIRM, LLC.

/s/
Ralph J. Sczygelski
RJS/sjs

Enclosure(s): Check for $25.00

pc: Mr. Heimermann

*County of Milwaukee*
**Office of the Sheriff**
Records & Identification ♦ 226-7085

March 1, 2007
**David A. Clarke, Jr.**
**Sheriff**

To Whom It May Concern:

Re: Bryant, Anthony C
**Our R & I No.: 07-41909** DOB: 06/02/67
SSN: not provided

Upon checking our files, we find that the above named subject has the following record on file with our department:

| *DATE* | *CHARGE* | *DISPOSITION* |
|---|---|---|
| 03/21/89 | Battery | Not Issued |

This arrest was made by the Milwaukee Police Department.

Very truly yours,

**David A Clarke Jr.**, SHERIFF
Milwaukee County, Wisconsin

/s/ Darlene Bartram
Darlene Bartram
Records Custodian

**Note:** The Criminal History Record that we have provided **only indicates whether the individual**

**you are interested in has been arrested by the Milwaukee County Sheriff's Department**, and the dispositions of those arrests. For a comprehensive state-wide adult arrest record of serious offenses, contact the Wisconsin Department of Justice--Crime Information Bureau at (608) 266-5764.

CLEARED FOR RELEASE
PUBLIC INFORMATION-OPEN RECORDS
Milwaukee County Sheriff's Department
SIGNED: DATE:
Darlene Bartram 3/1/07

*Service to the Community Since 1835*

821 West State Street • Milwaukee,
Wisconsin 53233-1488
414-278-4766 • Fax 413-223-1386
• http://www.mkesheriff.org

1318 R27

*County of Milwaukee*
**Office of the Sheriff**
Records & Identification ♦ 226-7085

March 18, 2007
**David A. Clarke, Jr.**
**Sheriff**

Sczygelski Law Firm
1131 S 8th St
Manitowoc, WI 54220

**Our R & I #07-42328**

Dear Sczygelski:

Our office has received your request dated March 18, 2007, wherein you are seeking information regarding the arrest of Anthony C Bryant.

The arrest for battery on 03/21/89 was dismissed according to court records. Mr. Bryant was arrested by the Milwaukee Police Department on that date. He was never booked into our old jail. Milwaukee Police Department owns the fingerprints. Please contact that agency for the prints.

Very truly yours,

**David A Clarke Jr**, SHERIFF
Milwaukee County, Wisconsin

/s/Darlene Bartram
Darlene Bartram
Records Custodian

*Service to the Community Since 1835*

821 West State Street • Milwaukee,
Wisconsin 53233-1488
414-278-4766 • Fax 413-223-1386
• http://www.mkesheriff.org

1318 R27

**INTERSTATE FLIGHT - MURDER**
**WANTED BY FBI**

**MUHAMMAD D. BINWALEE**

[*Fold-Out Exhibit, see next page*]

116
.90

INTERSTATE FLIGHT - MURDER

# WANTED BY FBI

FBI No.
265 561 EA6

also known as: Muhammad Brotha, Akram Brotha, Brotha, Wajee Brother, Anthony Bryant, Anthony

## MUHAMMAD D. BINWALEE

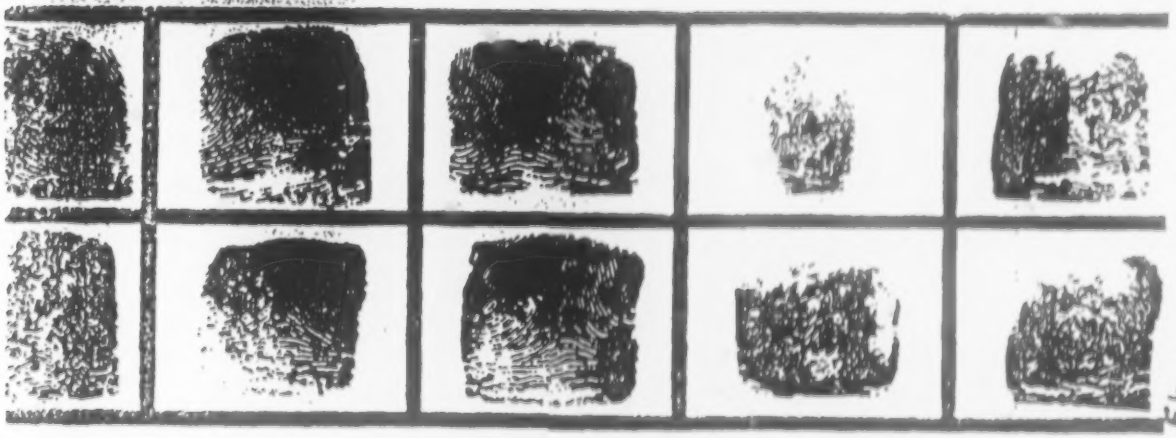


Photograph Taken 1987

| | | | |
|---|---|---|---|
| Date of Birth: | June 2, 1967 | Hair: | black |
| Place of Birth: | Chicago, Illinois | Eyes: | brown |
| Height: | 5'8" | Complexion: | dark |
| Weight: | 140 pounds | Race: | Black |
| Build: | slender | Nationality: | American |
| Occupation: | sells narcotics | | |

Muhammad Bin'wale

Fingerprints class. as I.C. I.C. classification
prints OK, 3 16 90 1182 mk



### AL RECORD

[illegible] Identified at Thatti.

[illegible] was issued on June 29, 1988, at Chicago, Illinois, charging Unlawful Interstate Flight to Avoid Prosecution for the crime of [illegible], U.S. Code, Section 1073.

ANY INFORMATION CONCERNING THIS PERSON, PLEASE CONTACT [illegible] FBI OFFICE. TELEPHONE NUMBERS AND ADDRESSES OF ALL FBI [illegible] ON BACK.

NCIC: AAAAAA1213AAAA021112

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### CAUTION

BINWALEE, A KNOWN MEMBER OF THE BLACK DISCIPLE STREET GANG, IS BEING SOUGHT IN CONNECTION WITH A MURDER IN WHICH THE VICTIM WAS SHOT SIX TIMES AT CLOSE RANGE WITH A HANDGUN. CONSIDER ARMED, DANGEROUS AND A DRUG USER.



b7C

DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

EXHIBIT "G"

BEST AVAILABLE COPY

**FEDERAL BUREAU OF INVESTIGATION**

| | |
|---|---|
| Reporting Office | CHICAGO |
| Office of Origin | CHICAGO |
| Date 12/7/89 | Investigative Period (6/29/89-12/7/89) |

| | |
|---|---|
| [Illegible] of Case | Muhammad, D. BinWalee, aka;<br>Anthony Bryant, ✓<br>Walee BimWaler,<br>Haroon BinWalee,<br>Anthony Howard,<br>Anthony Howards |

SSF
CLASS _____
SRC'D _____
SER _____
REC _____

Report made by
Detective [Illegible] CPD,
FBI Violent CrimeTask Force
Typed BY: GHP
Character of Case
UFAP-MURDER

SUMMARY
NON-PROSECUTIVE SUMMARY

The Defendant Muhammad D. BinWalee, has been friends with the victim David Curry, up until 1/21/88 when both parties had a disagreement of [over] some proper [illegible]. The Defendant promised to get even with the victim. On 7/2/88, the victim appeared at the home of a mutal [sic] friend a [of] the Defendant, in Chicago, Illinois. While the victim stood on the street talking with friends, the Defendant arrived in an auto, exited same walking up to the victim then shot the victim with a handgun; while as many as five

witnesses looked at the incide [illegible]. The victim while laying on the ground shot, stated to the Defendant, "Muhammad, don't kill me". The Defendant, now standing over the victim replied, "Why shouldn't I kill you", then the Defendant pointing his weapon down at the victim, fired six times into the victims body. The witnesses seeing this, then saw the Defendant get back into the same auto he had arrived in, and left the area. The witnesses in this case also know the Defendant, and [illegible] in the area, to give statements to the police. The Defendant is a member of the black gangster disicple [sic] street gang, and makes his money from the sale of narcotics, and is a user of marijuana.

*DUE TO THE NATURE OF SUBJECT'S OFFENSE AND KNOWN DRUG USE AND GANG AFFILIATION, CONSIDERED ARMED AND DANGEROUS*

Approved Special Agent

Copies made: [ENCLOSURE [Illegible]

2 - Bureau 1 - ENCLOSED

2 - Chicago

Do not write in spaces below

88-98346-1X1
15 MAY 31 1990

Notations:

MUHAMMAD D. BINWALEE

On July 3, 1988, the CIRCUIT COURT OF COOK COUNTY, Illinois, issued an arrest warrant for the charge of murder - Chapter 38, Section 9-1a2 of the Illinois Revised Statutes - against the subject BINWALEE, with case docket number 88-236608.

On May 6, 1989, this case was assigned to the FEDERAL BUREAU OF INVESTIGATION (FBI), Violent Crimes Task Force (VCTF) after, it was believed by the CHICAGO POLICE DEPARTMENT that the subject had fled the State of Illinois to avoid prosecution.

After an investigation conducted by the VCTF, on June 29, 1989, a federal complaint was filed in the United States District Court, Northern District of Illinois, Eastern Division charging the subject BINWALEE with Unlawful Flight to Avoid Prosecution, Title 18 Section 1073 of the U.S. Code. A federal UFAp warrant was issued the same day by U.S. MAgistrate JAMES T. BALOG, under Docket number 89CR0583.

FACTS AS TO DANGEROUSNESS:

BINWALEE is a known affiliate of the Black Gangster Disciples (BDG) street gang and has had previous arrest for the possession of marijuana and various firearm weapons violations.

Since June 29, 1989, leads to various field offices has shown the subject having been seen in Los Angeles, California; Milwaukee, Wisconsin; and Gary, Indiana.

BINWALEE'S known criminal history sheets are attached to this report.

DETAILED PHYSICAL DESCRIPTION:

| | |
|---|---|
| Name: | MUHAMMAD D. BINWALEE |
| Aliases: | Anthony Bryant,✓<br>Anthony Howard,<br>Anthony Howards,<br>Walee Bimwaler,<br>Muhammad Binwale,<br>Haroon Binwalee,<br>Haroon Bin Walee |
| Sex: | Male |

| PO15-B 5.89 SUPPLEMENT REPORT MILWAUKEE POLICE DEPARTMENT | • INCIDENT SUPPLEMENT ○ ACCIDENT SUPPLEMENT ○ JUVENILE SUPPLEMENT | PAGE 1 of 5 | DATE OF REPORT 04-05-91 | INCIDENT/ ACCIDENT # 91-15348/M2410 |
|---|---|---|---|---|
| INCIDENT / INFORMATION | INCIDENT HOMICIDE | | DATE OF INCIDENT/ ACCIDENT 03-08-91 (Discovery date) | REP CON # |
| | VICTIM BINWALEE, Muhammad D. | | LOCATION OF INCIDENT/ACCIDENT (Address) 941 S. 35th Street | DIST 6 |
| JUVENILE LAST NAME FIRST MID | | | DATE OF BIRTH | ○DETAINED ○ORDERED TO MCCC ○OTHER |

| QUAN | TYPE OF PROPERTY | DESCRIPTION | SERIAL # | CODE # | VALUE |
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On Tuesday, 4-2-91, we, Detectives Dennis MURPHY and James BECKER, drove to Minneapolis, Minnesota to interview Candice FLETCHER. We had received information that Candice FLETCHER had been the girlfriend of T.C., who has been tentatively identified as Muhammad BINWALEE, B/M, 6-2-67,

who had been tentatively identified through dental records and tattoos as possibly being victim #1 in this offense. Candice FLETCHER had been living with BINWALE and another black male by the name of DION, in Milwaukee and had reported to a relative of DION'S that they were missing.

We drove to Minneapolis and proceeded to 2022 S. Park Ave., Apt. #306, where we met with Candice FLETCHER, B/F, 6-3-70, who is employed at the Yorkshire Nursing Home located at 22 South Park Avenue, #871-2200.

We interviewed Miss FLETCHER who related that she is in the process of moving to 1501 S. Portland Ave., Apt. #111. She related that she will1 be living at that location as of 4-6-91.

Miss FLETCHER was then questioned regarding her knowledge of T.C. or Muhammad BINWALEE. She indicated that she was the girlfriend of Muhammad BINWALEE and had known him since childhood. She related that they both went to school together. She further indicated that while he was in Chicago he was a member of the Black Gangster Disciples. Candice related that Muhammad had been robbed in Chicago by a fellow gang member, DAVID. She indicated that he had beaten Muhammad and had taken his money. After this occurred, Muhammad ran into this subject and subsequently shot and killed him. After this incident, she and Muhammad fled the Chicago area to Memphis, Tennessee where they lived for several months. They then returned to Chicago, remained there for a while and subsequently moved to Milwaukee. She indicated that upon arrival in Milwaukee, which she believes was sometime in

January of 1989, they moved to the area of 26th and Michigan. When they moved to Milwaukee, Muhammad used the initials T.C. due to the fact that he was wanted for the Homicide in Chicago. She also used the name of Alicia WILLIAMSON, so that they could not be located.

After arriving in Milwaukee they met a black male by the name of JAMES, who was selling drugs in the vicinity of 26th and Michigan. Also working for JAMES was a younger black male, about 15 years, known as DION. She indicated that T.C. got along

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| REPORTING OFFICER PAYROLL # LOC CODE | SUPERVISOR SIGNATURE |
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| PO15-B 5.89 SUPPLEMENT REPORT MILWAUKEE POLICE DEPARTMENT | • INCIDENT SUPPLEMENT ○ ACCIDENT SUPPLEMENT ○ JUVENILE SUPPLEMENT | PAGE 2 of 5 | DATE OF REPORT 04-05-91 | INCIDENT/ ACCIDENT # 91-15848/M2410 |
|---|---|---|---|---|

| INCIDENT INFORMATION | INCIDENT HOMICIDE | DATE OF INCIDENT/ ACCIDENT 03-08-91 (Discovery date) | REP CON # |
|---|---|---|---|
| | VICTIM BINWALEE, Muhammad D. | LOCATION OF INCIDENT/ACCIDENT (Address) 941 S. 35th Street | DIST 6 |

| JUVENILE LAST NAME<br>FIRST MID | DATE OF BIRTH | ○DETAINED<br>○ORDERED TO MCCC<br>○OTHER |
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| QUAN | TYPE OF PROPERTY | DESCRIPTION | SERIAL # | CODE # | VALUE |
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well with DION and after a couple of days. DION asked T.C. if he could work for him, selling drugs. T.C. allowed this and DION moved in with them. They lived on 26th Street for a while and then moved to 2445 W. Wisconsin, into a white apartment building. While they were living in this building, they would go

to the Bowling alley/bar located on 24th and Wisconsin (Central Park Building - old Eagles' Club).

While there, the apartment manager, KEITH, introduced them to two other white males who, upon viewing photos, were identified as Scott HEIMERMANN and Edward PISCITELLO. She met these two subjects in the bar and they kept inviting them over to the bar for free drinks. She thought that they may have had some type of ownership in the bar because they were acting as "big shots" and were giving away drinks. She also related that these two subjects began buying drugs from them and subsequently would purchase drugs every other day. They usually bought a "sixteenth" or a "quarter ounce".

She also met another white male through these subjects. Upon viewing photos, she picked out the photo of Joe ISAJIW. She only saw this subject a couple of times. The only contact she actually had with him was when she bought a TV and VCR from him in exchange for some cocaine. She related that most of the time Ed and Scott would come to their apartment to purchase cocaine. She indicated that they moved from 2445 W. Wisconsin to 417A N. 29th Street. DION moved with them. She indicates that Muhammad would only deal with subjects he knew and trusted. She indicated that he would even deliver drugs to these subjects. She does not know where he would make his deliveries, only that he and DION would leave in a red Chevy Nova, older model and they would be armed when they left. She indicated that the only time she observed a drug transaction was when they were completed at her residence.

She also indicated that Muhammad would obtain his cocaine through one of his brothers in Chicago. She would go down, pick up two ounces, come back and deliver the cocaine for Muhammad to sell. She indicated that in August of 1989 (early part, around August 9th) she went to Chicago to babysit for her little sister as her mother was going on a cruise. She went on Friday and her mother left for the cruise on Saturday or Sunday. The following Tuesday, she returned to Milwaukee with two ounces of cocaine and gave them to her boyfriend Muhammad. She subsequently became involved

| REPORTING OFFICER PAYROLL # LOC CODE | SUPERVISOR SIGNATURE |
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| PO15-B 5.89 SUPPLE-MENT REPORT MILWAUKEE POLICE DEPART-MENT | ○ INCIDENT SUPPLE-MENT ○ ACCIDENT SUPPLE-MENT ○ JUVENILE SUPPLE-MENT | PAGE _ of _ | DATE OF REPORT | INCIDENT/ ACCIDENT # |
|---|---|---|---|---|

| INCIDENT INFORMA-TION | INCIDENT | DATE OF INCIDENT/ ACCIDENT | REP CON # |
|---|---|---|---|
| | VICTIM | LOCATION OF INCIDENT/ACCI-DENT (Address) | DIST |

| JUVENILE LAST NAME<br>FIRST MID | DATE OF BIRTH | ○DETAINED<br>○ORDERED TO MCCC<br>○OTHER |
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| QUAN | TYPE OF PROPERTY | DESCRIPTION | SERIAL # | CODE # | VALUE |
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On Mon. 3-18-91 Det B.DeBraska received information from Ed P. that when he was investigating Keith A.Zerwes W/M4-28-56 of 2445 W. Wisconsin Ave a B/M know as T.C. was residing in the same building as Zerwes. Info is thaT Zerwes was the building mgr. in Apt.101 between the months of May and July 1989. Info is that T.C. lived one floor below with another

B/M. Another person who resided there during this period was a blonde female named Shawn Taylor,and that she knew T.C. personally and became the live in girlfriend of Roberts Theno and she is presently living at 5017 S.55th st. apt. C-102.

Det. DeBraska also stated that he arrested a subject Dynel Goldsmith for DOCS (cocaine) who frequented this building and personally knew T.C. This person should still be incarcerated somewhere in this state on those drug charges.

Det's Vitale and Stuhmer were checking on the info received from this info on the building at 2445 W.Wisconsin Ave, and as they went to said area they observed that the building was being razed at this very moment. There is no info on the past owner at this time but will be checked and results will be filed on same.

I Det. Castillo called Shawn Taylor and she does remember that she did spend time living at that address during the period in 1989, but believes the person she knew as T.C. was in fact a W/M. She cannot give any specifics regarding that person. Nothing more regarding this info at this time. The subject Dynel Goldsmith has not been contacted at this time.

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| REPORTING OFFICER PAYROLL # LOC CODE | SUPERVISOR SIGNATURE |
|---|---|
| DET. RONALD CASTILLO 37788 92 | |

SUPERVISOR SIGNATURE

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On Tuesday, July 18, ~~1991~~ [89] I was working in an undercover capacity with a confidential informant (Eddie). I was introduced to John Doe "Keith B/M 25 5'8" 170-180 lbs stocky build with tatoo [sic] on right arm. This took place at 2445 W. Wisconsin Ave. Apt. 202. This was the 2nd floor apartmen [sic] West side of the building, front apartment facing W. Wisconsin Ave. I purchased a quantity of cocaine from Keith. Information from the C.I. was that Ruby and T.C. lived there. Keith had a Red Chev [sic] Nova (68) and T.C. had a White Mercury. T.C. wanted guns for cocaine.

On Thursday, July 20, ~~1991~~ [89] I again went to 2445 W. Wisconsin Apt. 2 to purchase cocaine. I was met at the door by "Ruby" B/F 20 and was told that T.C. and ~~Leon~~ [Keith] had gone to Chicago to pick up and would be back later.

On Saturday, July 22, 1989 at 1:45 P.M. I again went to 2445 W. Wisconsin Ave. Apt. 202 and met with John Doe "~~L~~[D]eon" B/M 16-18 5'8" 160 lbs. He delivered a package of cocaine to me. I also met with T.C. T.C. had been sleeping and came out of the bedroom. I had conversation with him regarding me trading him guns for cocaine. He wanted to see my guns. I told him I had the guns in the car and he wanted me to bring them up to the apartment. I refused and he sent ~~L~~[D]eon down to my car where ~~L~~[D]eon examined the gun I had brought with me. I left my beeper number with T.C. and told him to call me when he wanted to do something. He never got back to me. As I recall T.C. was a B/M 26-30 5'6 140. He was wearing gold jewelry. Conversation from these

indiviuals [sic] revealed that they were gang members from Chicago.

Keith had numerous tatoos [sic]. To the best of my recollection the utilities or phone were listed to *Alice Williams* or *Williamson*.

[All three of us were in that area and Tom and Berry knew it.]

During July of 1989 Det. Wilke had occasion to interview *Keith Zerwes* W/M 4-28-56 who had been residing at 2445 W. Wisconsin

Zerwes expressed an interest in cooperating with the police in narcotics investigations. Zerwes made one controlled buy from T.C."s wife – *Alicia Williamson* B/F 20-25 5'4" 105 lbs. at that same apartment. Zerwes new [sic] T.C.

In August of 1989 I learned that TC had moved to 417 N. 29th ST. Apt. A phone # 342-5961.

I also had numerous conversations with the confidential informant "Eddie" about his aunt ~~lie~~[die]ing and his moving into her house and that we could use that house for "deals". I also recall running into the informant sosm [sic] time after that and he was driving a new BMW and had expensive clothes on. We had a short conversation and parted. This was in the 1400 block of N. Water.

Upon checking B Of I records there are three *Alicia Williams* B of I #'s 205412, 222719, & 200894.

Alicia Williams B/F 12-22-64 of 1909 N. Lamar Blvd. was arrested for prostitution. This could be alias used by Alicia Williamson

REPORTING OFFICER Det. Thomas Gorecki

| PO15-B 5.89 SUPPLEMENT REPORT MILWAUKEE POLICE DEPARTMENT | ○ INCIDENT SUPPLEMENT ○ ACCIDENT SUPPLEMENT ○ JUVENILE SUPPLEMENT | PAGE of | DATE OF REPORT | INCIDENT/ ACCIDENT # |
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| INCIDENT INFORMATION | INCIDENT | DATE OF INCIDENT/ ACCIDENT | REP CON # |
|---|---|---|---|
| | VICTIM | LOCATION OF INCIDENT/ACCIDENT (Address) | DIST |

| JUVENILE LAST NAME<br>FIRST MID | DATE OF BIRTH | ○DETAINED<br>○ORDERED TO MCCC<br>○OTHER |
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| QUAN | TYPE OF PROPERTY | DESCRIPTION | SERIAL # | CODE # | VALUE |
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On Tues 3-19-91 I Det. Castillo contacted MARY CARLTON who is employed at Security Real Estate & Managment Corp. regarding the property at 941 S.35th st. At this time she referred me to the president of said Corp., one THOMAS K. ANDERSON and while talking to him he stated that he had a file on that

address and that I should come to Security Bank and he would discuss it with me.

On 3-19-91 I did go to THOMAS ANDERSON's office and as we talked about the property and going over the file which is basically notes and transactions when the corporate lawyer called an advised Mr. Anderson that it would be in the companies best intrest to turn over the file to me under a subpoena,to protect themselves. I stated that I had no problem with that and that I would produce one for the records as soon as possible. During our conversation I did learn that there was mention in the file regarding the persons of SCOTT HEIMERMANN, ED PISCITELLO,and HEPHNER. Mr. Anderson also stated that they took over the property in July 1990. the locks were changed at that time and they were now in control of the residence. He stated that it was mostly stripped and that they had a crew come into clean it up. They also had to have some plumbing work done in the basement and that was done in Feb. 1991.

While at the Security Bank I called a IRV FLISS of 3401 S 104th st. Greenfield Wisc. Ph # 543 1745 who billed security Bank for the clean up at said home. He stated that he does not remember what exactly what was in the basement (namely pillow), in that he had three other guys help him clean out the house. He states that he will contact the people who worked for him and try to find out if they saw anything in the basement that may be of intrest to me. I was also given the name of the family lawyer of the PISCITELLO's and that is Mr. Dall Ph #291 9696 who may also be of some assistance.

I was advised by Mr. ANDERSON that he was going to be out of town as of Thurs. 3-21-91 and that he would be back Mon. of next week. I stated that I would obtain a subpoena for the file on 941 S.35 th st. and return to serve it on Security Bank.

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| REPORTING OFFICER PAYROLL # LOC CODE | SUPERVISOR SIGNATURE |
|---|---|
| DET. RONALD CASTILLO 37788 92 | |

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY

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IN THE MATTER OF THE APPLICATION
FOR SEARCH WARRANT OF PREMISES AT:
941 South 35th Street, single family
two-story home, red asphalt siding,
green shingle roof, single front entry,
enclosed porch, Milwaukee Wisconsin,
for two deceased bodies.

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TRANSCRIPT OF REPORTER'S NOTES

Transcript of proceeding had in the
above-entitled matter, heard
before the HONORABLE AUDREY Y. BROOKS,
Judicial Court Commissioner for
County of Milwaukee,
State of Wisconsin
on March 8, 1991.

APPEARANCES:

Robert D. Donohoo
Assistant District Attorney
for the State of Wisconsin.

Brian O'Keefe, Detective, Witness.

Jan M. Johnson, RPR
Court Reporter

(Whereupon proceedings were had in Chambers.)

MS. DONOHOO: We're asking for a search warrant to dig up a basement in a house for two bodies. My name is Robert Donohoo, Deputy District Attorney for Milwaukee County.

THE COURT: And which parties will be testifying?

MR. DONOHOO: These two parties.

(Whereupon the witnesses were sworn under oath to testify. )

THE COURT: You want the informant not to be identified at all?

MR. DONOHOO: That's correct.

THE COURT: We have one confidential informant and one detective. Identify yourself, and spell your name.

DETECTIVE O'KEEFE: Detective Brian, B-r-i-a-n, O'Keefe, O'-K-e-e-f-e.

MR. DONOHOO: Why don't I have Detective O'Keefe testify first. Would you please state your name and spell your last name again for the record?

DETECTIVE O'KEEFE: Detective Brian O'Keefe, O'-K-e-e-f-e.

EXAMINATION OF DETECTIVE O'KEEFE

BY MR. DONOHOO:

Q And what is your present occupation?

A I'm a detective with the City of Milwaukee Police Department.

Q Have you within the last several days, either you or someone

[p.3]

else in the city of Milwaukee Police Department, had and occasion to view a residence in the City of Milwaukee?

A Yes.

Q And what is the address of the residence?

A 941 South 35th Street.

Q What city is that in?

A City of Milwaukee and County of Milwaukee.

Q Okay. And can you describe what presently is located there?

A A single family two-story home, red asphalt siding, a green shingle roof, single front entry, enclosed porch.

Q Okay. And is the address of 941 located anywhere on that residence?

A It's on the front of the residence.

Q Okay. And that residence is presently still there at the present time?

A That's correct.

Q Okay. Now, a person is about to testify. Have you talked to any fellow City of Milwaukee police officers concerning that person's prior involvement with the City of Milwaukee police?

A Yes, I have.

Q Okay. And has that person given reliable information in the past?

A Yes, it has on several occasions.

Q Okay. And has that information led to the seizure of drugs and solving other crimes?

[p.4]

A That's correct.

MR. DONOHOO: I have no further questions of this officer.

EXAMINATION OF "IT"

BY MR. DONOHOO:

Q You are a person -- I would ask -- I'm going to refer to you as an "it." Would you state whether or not -- did you have an occasion during August of 1989 to be located at the residence located at 941 South 35th Street, Milwaukee, Wisconsin?

A Yes.

Q And when you were in that building, was it -- the time we would be referring to, was it day or night?

A Evening.

Q And were there other people present with you?

A Yes.

Q Okay. Just approximately how many, just approximately?

A Maybe eight, nine, give or take.

Q Now, did there come a time when you heard or saw some loud noises?

A Yes.

Q Eventually, were you in the basement of that residence on that day?

A Yeah, I was asked to go to the basement, yeah.

Q Okay.

(Off the record.)

[p.5]

BY MR. DONOHOO:

Q In the basement did you have an occasion to see two people who were dead?

A Yeah. I saw two guys laying on the floor, yeah.

Q What was their race?

A They were black.

Q Okay. Now did you form an opinion either based upon what you had personally seen or based on the -- upon the information that you were made aware of what had happened to those two people?

A Yes.

Q And what was the answer to that? What do you think happened to those two people?

A They were dead, I know that.

Q Okay. And do you believe that they had been killed recently?

A Oh, yeah.

Q. Why?

A. Because there was blood all over the place.

Q Did you see any type of weapon?

A I think I did, but I can't -- you know, it happened so fast.

Q Okay. Did you form any opinion as to how they were killed; what type of weapon was used, knife, gun?

A It was a gun.

Q Okay. Now, in that residence in the basement at this point was there a hole in the basement in the floor?

[p.6]

A Yeah. Well, the ground had been dug up, yeah.

Q Okay. And did -- were you told by another person that, in fact, those two people were killed in the basement on that evening?

A Yeah, I mean, yeah, I knew that they were dead. It happened there.

(Off the record.)

BY MR. DONOHOO:

Q After you saw those two people who were dead, did you within a week after that time have as occasion to return to that home?

A Yes.

Q Did you go to the basement?

A Yes.

Q What was the condition of that hole in the ground?

A It was covered up -- I mean it was redone. It was cemented up, everything was cleaned up.

Q Okay. Now, did you have any reason to believe that in that hole was two bodies plus the weapon that was used to kill them? Say yes or no.

A Yes.

Q Okay. Was that based upon what someone who was involved in the shooting told you?

A Yes.

Q Okay. After this occurred were you told -- strike that. Did you receive information that -- just one second. After this

[p.7]

occurred did you receive information that several items of jewelry that several items of jewelry that had been possessed by one or more of the two dead black males had been taken from that residence?

A Yes.

Q Okay. And did you receive information that, in fact, those items were basically sold at a jewelry store?

A Yes.

Q Okay. And did you receive information as to the name of the person who actually was present at the scene when these two people were shot and who subsequently got rid of this jewelry?

A Yes.

Q And what was his name?

A Scott Heimermann.

Q And did you receive information that, in fact, during the month of August of 1989 after this incident, Scott Heimermann sold this jewelry?

A Yes.

Q And were you told where he sold it?

A. Yes.

Q And where was that?

A At Stein's.

Q Okay. Are you in fear of your safety at the present time?

A Yeah.

Q Okay. If your identity is made known or is found out in any way, what do you think is going to happen to you?

[p.8]

A I know -- I know most of the people that were involved are all bikers, the majority of them, they're associated with bikers. They got biker affiliation so word will travel fast.

Q You believe you would be killed or seriously injured?

A More than likely, I'd disappear somewhere.

Q Okay.

MR. DONOHOO: I'm going to ask at this point that Detective O'Keefe testify.

EXAMINATION OF DETECTIVE O'KEEFE

BY MR. DONOHOO

Q Detective O'Keefe, did the City of Milwaukee Police Department conduct an investigation dealing with some jewelry purchases made by Stein's Jewelry during August of 1989?

A That's correct.

Q And, in fact, do you have that information with you?

A Correct.

Q Okay. What does the information show?

A It shows that a Scott Heimermann, middle initial "A" birthday of 9-23-60 sold items of jewelry twice in August of '89 at Stein's.

Q And were those items consistent with what the person who has just testified told you had been sold?

A That's correct.

Q And, in fact, the City of Milwaukee Police Department is in possession of business records from Stein's Jewelry which

[p.9]

indicates those two sales and purchases, correct?

A Correct. They're transaction cards kept in the normal course of business.

Q Do you at the present time -- have the records been checked to see who presently owns the residence located at 941 South 35th Street, Milwaukee, Wisconsin?

A Yes, they have.

Q Can you give that name?

A John D. Rockefeller.

Q Okay. Detective O'Keefe, at the present time, based upon your investigation -- the investigation of the City of Milwaukee Police Department, do you have an opinion as to whether or not evidence of a crime is located at 941 South 35th Street, Milwaukee, Wisconsin?

A Yes, I do.

Q What do you think is located there?

A I think that there's two bodies of black males that had been spoken of earlier and possibly the weapon used to kill them.

Q Okay. Is it practical to ask John Rockefeller for consent to enter his basement and to look around?

A At this time from the information we have, no.

Q And why not?

A It appears he may have some biker connections.

MR. DONOHOO: I have no further questions of either witness, Your Honor.

[p.10]

BY THE COURT:

Q Detective, if I understand this testimony correctly, these allegations -- or the allegation of these offenses took place in August of 1989. Has there been a continuing investigation? What brought this information to light now in March of 1991?

A The affiant brought the information. We weren't aware of the homicide actually having occurred.

Q So you received information with the last 72 hours that caused the investigation to become ongoing; is that right?

A That's correct.

Q And what offenses or what statutes do you believe have been violated -- what offenses are you searching for evidence for?

A 940.01, first degree intentional homicide.

Q And, as far as you know, this dwelling is in the County of Milwaukee, State of Wisconsin?

A That's correct.

THE COURT: Anything further?

MR. DONOHOO: No, Your Honor. Basically under the Law of Wisconsin, case law, it says if a person testifies before the Court in person that the person, if the Court so wishes, is automatically reliable without showing a prior reliability.

So I ask the Court to issue a search warrant for the residence located at 941 South 35th Street, single family, two story dwelling with the address of 941 displayed on it. The

[p.11]

purpose of it will be to find evidence of a crime, to wit, one or more bodies and possibly a weapon, and the crime involved would be 940.01, first degree intentional homicide.

THE COURT: I'm satisfied based on the testimony on this record that probable cause exists for the issuance of a search warrant for the described premises, and I do so authorize.

Further, I find that the I.D. of the confidential informant need not be disclosed. And, finally, that when the transcript is typed, any reference to gender be deleted and the pronoun "it" be substituted.

(Whereupon proceedings concluded.)

1

STATE OF WISCONSIN )
) SS.
COUNTY OF MILWAUKEE )

I, JAN M. JOHNSON, RPR, Official Court Reporter in and for the State of Wisconsin, do hereby certify that I reported the foregoing proceedings and that the foregoing transcript, consisting of 12 pages is a true and correct transcript of my original stenographic notes transcribed to the best of my ability at said time and place.

Dated at Milwaukee, Wisconsin this 11th day of March, 1991.

/s/ Jan M. Johnson
Jan M. Johnson, RPR
Official Reporter

**STATE OF WISCONSIN**
**CIRCUIT COURT**
**MILWAUKEE COUNTY**

**Case No. F-911618**

**[Filed March 2, 1998]**

| | |
|---|---|
| STATE OF WISCONSIN, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| vs. | ) |
| | ) |
| SCOTT A. HEIMERMANN, | ) |
| EDWARD J. PISCITELLO | ) |
| JOSEPH ISAJIW, | ) |
| | ) |
| Defendants. | ) |
| | ) |

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SEARCH WARRANT

---

April 15, 1991

AUDREY Y. BROOKS
Judicial Court Commissioner

APPEARANCES:

JON REDDIN, Assistant District Attorney, appearing on behalf of the State.

Barbara J. Bohl, RPR – Official Court Reporter

[p. 2]

MR. REDDIN: Commissioner, it is now approximately 4:30 on April 15, 1991. My name is Jon, J-o-n Reddin, R-e-d-d-i-n, Assistant District Attorney. Also present in chambers are Milwaukee Police Detectives Brian O'Keefe, conventional, and Paul Stuhmer. And I would ask that Detective O'Keefe be sworn.

BRIAN O'KEEFE,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. REDDIN:

Q. We are here this afternoon asking for warrants under section 968.04 of the Wisconsin statutes for Edward J. Piscitello, date of birth 12-29-53, Scott Heimermann, date of birth 9-23-60 and Joseph Isajiw 2-5-60. Detective, have you spoken to a woman by the name of Joanne Danbrova?

A. Yes, I have.

Q. And what did she tell you with respect to two bodies that were found in the basement of 921 south 35th street, City and County of Milwaukee in March of 1991?

A. She stated that earlier in August of 1989 she was in that home with another female known to her as

Christine Schroeder and Edward Piscitello, Scott Heimermann and Joe Isajiw.

[p. 3]

Q. Now, those are the three people whose names and dates of birth I just recited for the court?

A. That's correct. She further stated that while in the home there was target shooting in the basement by the three males and that while she was down in there she became worried that neighbors were going to hear this shooting from the firearm in the basement. And at that time she believes Joe Isajiw made a statement to the effect, don't worry, the basement is soundproof. You can kill somebody and nobody would hear.

Q. She said that she heard him say that?

A. Yes. She further states that they went upstairs after the target shooting and she then heard discussion between Edward Piscitello, Scott Heimermann and Joe Isajiw, regarding a black male known to her as TC. She stated that they were talking about ripping TC off and taking TC out. She also states that they had discussion about having to kill TC's bodyguard too, or through TC's bodyguard to kill him too. She stated that they then said they were going to get them over to the house and do it, and Edward Piscitello then made a phone call and a short time later the black male known to her as TC and TC's bodyguard arrived at the home. They stated they were lead into the home by Scott Heimermann. They were all up in the kitchen area of the home for a short period

[p. 4]

of time and then she observed that Edward Piscitello, Scott Heimermann and Joe Isajiw saw TC and his bodyguard all went into the basement.

Q. At this time where was Joanne, where were Joanne and Christine?

A. They were located on the second floor of the residence in the kitchen area.

Q. Did she indicate whether Ed was mad at TC?

A. She stated that Ed was mad at TC because TC had either ripped him off or owed him money for something. And she states that the five men then walked into the basement of the residence while she and Christine remained on the second floor. She states that she heard what she believed to be four to five gunshots in the basement and she didn't think anything of it because she thought they were target shooting again. She states that Ed, Scott and Joe then came back up to the second floor of the residence and TC and his bodyguard did not come back up. She stated that she believes TC may have left the residence but she can't be sure of this.

Q. Has she since called you and clarified that statement?

A. She stated that on a prior statement that she thought that she may have seen him leave the residence, him being TC, and she did call me on

today's date and state that she couldn't be sure. She wasn't sure he left. It may

[p. 5]

have been just because she was told they left.

Q. By whom?

A. By Ed, Scott, and Joe.

Q. Did she indicate whether or not she had seen TC since that date?

A. She stated that after that day she never saw TC again. She also stated at approximately a week after this incident she was with Ed and Scott and Ed was making a big deal out of looking for TC, going to several places, taverns and drug houses, letting everybody know that he was looking for him and she felt that this was unusual because he had never done this before.

Q. Did she state that she then went down to Florida with Ed and Scott?

A. Yeah, she stated that early in September of 1989 she went down to Florida with Ed Piscitello and Scott Heimermann. She stated that while she was down there with him she did observe them, in her words, back slapping and joking and making statements to the effect, I wonder how our friend TC is doing. She stated they would laugh about this and she felt this was a private joke between the two of them.

Q. Now did she identify -- How did she identify the three men?

A. Joanne Danbrova was shown photographs taken by the Glendale Police Department of Joseph Isajiw, Scott

[p. 6]

Heimermann and Ed Piscitello and she made positive identification of all three photos as the persons we were just discussing.

Q. And the record of the Glendale and Milwaukee Police Departments reflect that their dates of birth are as I stated at the beginning of this proceeding?

A. That's correct.

THE COURT: Hold up a minute.

MR. REDDIN:

Q. When Joanne Danbrova said that they were target shooting in the basement prior to the time that she heard the shots when she was upstairs, did she indicate what they were using when they were shooting?

A. She indicated that it was a large dark handgun. We then demonstrated for her the placing of a magazine into a semi-automatic weapon. She stated that was the type of weapon it was.

Q. And did she indicate there was more than one gun or just one gun?

A. Joanne stated she only saw one gun.

Q. And did she indicate what they were shooting at or through?

A. A pillow and a board placed against the wall in the basement.

Q. Did she tell you what Ed, Scott and Joe did after she

[p. 7]

heard the shots for the second time?

A. She stated that they came back upstairs.

Q. And did what?

A. And they did cocaine.

Q. Have you also spoken to Christine Schroeder?

A. Yes, I have.

Q. What did she tell you with respect to what Joanne told you?

A. She also stated that in early August of 1989 she was picked up along with Joanne Danbrova who was her roommate and they drove to the house 941 south 35th street which was the home of Ed Piscitello and Scott Heimermann.

Q. Who did she say picked them up?

A. Scott Heimermann and Ed Piscitello picked her up.

Q. Did she make a statement as to Mr. Isajiw?

A. She stated she can't be sure whether or not he was there.

Q. And after they got to 941 south 35th street what happened?

A. She stated that they went into the basement and did some target shooting and she states that they were shooting against a pillow and board which was placed on a chair along the east wall of the residence.

Q. Did she identify weapons?

A. She stated that there were two guns, both semi-automatic with one being larger than the other. She stated that

* * *

[p. 20]

bracelet that had no name on it which was a generic I.D. bracelet. During the investigation it was found that the individual known as Deon Russell did in fact wear an I.D. bracelet that had no name on it, and further that TC was known to wear several types of jewelry. Also during the investigation it was found that the photos existed of the person known as Mohambid Binwalee with the alias of TC wearing several items of jewelry, one of which was a gold ring with a diamond cluster in it. A check of Stein's Jeweler revealed that Scott Heimermann did pawn a ring

similar in description in August of 1989. This ring was not found on the body when we did exhume it.

THE COURT: I am satisfied based on the testimony of this record that probable cause exists to believe that the crime of first degree intentional homicide as party to a crime was probably committed within the jurisdiction of the Circuit Court for Milwaukee County and probably committed by Joseph Isajiw, Edward Piscitello and Scott Heimermann. I am, therefore, authorizing arrest warrants for each of the named defendants.

MR. REDDIN: Thank you. I would also ask at this time that you order that the reporter's notes be sealed, not transcribed at this time and that they be sealed until further order of this court.

THE COURT: So ordered.

* * *

[p. 6]

MR. FLESSAS: Well, we never know that from moment to moment. Sometimes it works the other way around. The lawyers want to leave. In any event, I am moving to adjourn the preliminary hearing for this reason: Sometime ago there was a search warrant issued, and I think that should be made available to us. The transcript was sealed by the presiding magistrate, and it has not been made available to us, and I think to properly prepare for preliminary hearing, an order should be made to release, that to the defendant and his attorney so we can discover any information that may be of value to him.

I don't know why it was sealed. The statute says it could be sealed until the search warrant is returned. It was returned. All the documents were filed, and it still remains sealed; and, in addition to that, they've also sealed the affidavit and the affidavit of the district attorney as to his reasons why he asked that the search warrant be sealed.

Now, they have the transcript sealed and his affidavit stating the reasons. We are entitled to that in order to prepare for the preliminary hearing, and I think that's a reasonable request.

MR. HAYES: On behalf of Mr. Isajiw, I join in that motion.

[p. 7]

MS. TAN: On behalf of Mr. Piscitelio, I also join in that motion.

MS. CHRISTENSON: Your Honor, we have previously indicated to all three counsel that as soon as the preliminary hearing is over that we will jointly get together with the Commissioner and unseal the information that they are after.

This is discovery, however, and the defense has never been entitled to discovery before preliminary hearing. At preliminary hearing, the State only has to establish probable cause a felony was committed, and what is in the sealed material is not something that they are entitled to before the time that we establish.

MR. FLESSAS: Judge, I don't think that's right.

THE COURT: You show me a case. I think she's right on this. You show me a case to the contrary.

MR. FLESSAS: I'll show you the statute. It says seal it until the search warrant is returned. It has been returned, and there is no provision to seal it any longer, so it could unilaterally --

THE COURT: What statute are you referring to?

MR. FLESSAS: Just give us a moment,

[p. 8]

Judge.

Your Honor, we are bringing the statute back up again. I'll read the section, No. 968.21. It reads, "A search warrant shall be issued with all practicable

secrecy, and the complaint, affidavit or testimony upon which it is based should not -- shall not be filed --"

THE COURT: I can read. Let me read it.

MS. CHRISTENSON: It doesn't say it has to be filed. Your honor, the statute simply says it shall be secret until after it's executed. It doesn't even say - this statute doesn't even say that it has to be filed after the search warrant is executed. It just says it "shall not be filed with the clerk or made public in any way until the search warrant is executed."

MR. FLESSAS: It was filed, Your Honor. And the search warrant was signed by the detectives that executed it. They brought it back, and that ended under the statute their right to keep it secret. These defendants are entitled to have that information at this point.

MS. CHRISTENSON: They are not.

MR. FLESSAS: There may be a reason she doesn't want us to see it until after the preliminary. It may benefit us.

[p. 9]

MS. CHRISTENSON: I don't want to make available hundred of pages until after the preliminary either.

THE COURT: Counsel, I am satisfied that it's discovery, and that the purpose of a preliminary hearing is to establish probable cause that a felony was committed commensurate with the complaint that

was issued, and that the defendant so named or defendants so named in the criminal complaint probably committed the felony.

This is the only determination which the preliminary court judge must make. Now, the purpose of sealing a search warrant and the affidavit and testimony that's taken is for the security of the information not leaking out prior to the time the search warrant is served, and this has got nothing to do with the preliminary hearing whatever.

I can understand your concern, but the preliminary hearing is only to establish two things, probable cause that a crime was committed and that the defendant or defendants probably committed the crime.

Now, after the preliminary hearing is over with, then you certainly are entitled to it for whatever it's worth. Then you are getting into the discover, but here, a preliminary hearing is not a discovery process.

[p. 10]

MR. FLESSAS: The statute doesn't say anything about preliminary hearings. It says secrecy until it is returned, and unilaterally they have placed this document under orders to be sealed, and it denies my client the right to prepare his case until they are ready to give it to us. It has nothing to do with discovery.

And the previous preliminary hearing was dismissed, and not this is the second time around, and we are asking to get the information which I think

might also lead to a dismissal of this case. It has nothing to do with discovery, absolutely not. This isn't a unilateral --

THE COURT: If you can show me a case on point, certainly I will be willing to change my ruling here, but --

MR. FLESSAS: This is better. This is a statute.

THE COURT: Better or worse. Do you have any cases, Counsel?

Miss Christenson?

MS. CHRISTENSON: I have no cases that say that we have to unseal what is sealed or we can unilaterally seal it. It was sealed at the order of the Court Commissioner.

As I said, I indicated to counsel after

[p. 11]

the preliminary hearing, along with all the other discovery, the sealed material will be unsealed and made available.

MR. FLESSAS: Judge this bolsters our case. She has no cases. She can not refute the statute, and we are asking that the Court look into this transcript and tell us if there is anything exculpatory that helps the defendants. They are entitled to it know, and she's trying to hold it back for some reason that only aids the State.

I don't think that's an unreasonable request. We all want to read the transcript, and we'll decide whether it helps us or not. I don't think the District Attorney should tells us whether or not it will help our case or whether we have to wait for it.

THE COURT: You're making a good argument, but not good enough. I am satisfied here, the statute here, it doesn't specifically say that it can be sealed for weeks on end after the search warrant has been issued, and it doesn't say that it can't be.

I am satisfied that the only purpose of this hearing today, there is no finding of guilt on way or the other. There are two findings which have to be made, probable cause a felony was committed and the defendant or defendants so named in the criminal

[p. 12]

complaint probably committed the felony. But then at that time you can raise the question as to search and seizure, whatever it might be. But at this step in the proceedings, I don't think you have any standing in court.

MR. FLESSAS: Our people are held under high bail, being detained. There's no other way to interpret the statute. It says "or made public in any way."

THE COURT: I am interpreting it that way. That's the way I am interpreting it.

MR. FLESSAS: You asked me to give you some law.

THE COURT: So you gave me the law, and I am of the opinion and find that the statute is not applicable under these circumstances to granting your motion. As I say, you are getting into the question of discovery, and you may have a legal question that you're raising, but not today. At a later date. And if, and I am just speculating when I say this, if you should be denied the opportunity, let's assume for the sake of argument that the preliminary hearing is over with, the defendants are bound over, and then a court refuses to open up the search warrant and the affidavit and the testimony that was taken at the time of the application

[p. 13]

for the search warrant, then I think the court would be committing an error under those circumstances, and I can imagine any reason why a judge would refuse to grant your motion at that time.

There just would be no legal reason in my mind that a judge could have or judge would have the authority or the jurisdiction to deny your motion at that time. But today, this is another story and a different ball game, and a different stadium too.

MR. FLESSAS: I understand what the Court is saying. My point is the case was dismissed once. They are still being held.

THE COURT: I don't know why it was dismissed once. I have no concern with that, whatever the reason was.

MR. FLESSAS: We state it as a verity. They are still being held. It could be dismissed again if we have the information.

[REDACTED] It wasn't dismissed the first time because the judge denied the opportunity for counsels for the defendant to review the testimony and the affidavit attached to the search warrant? It wasn't dismissed for that reason, was it?

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MR. FLESSAS: No. In that case, we request the Court upon completion of this preliminary hearing an order be made so we don't have to monkey around any more: Everything sealed shall be turned over to us. Is there any reason why it can't be done?

THE COURT: I am giving you an opinion off the top of my head. I see no objection -- if there should be a bindover here, I would see no objection to granting your motion. It would be the order of the Court, unless the District Attorney can show me good reason why it should not be opened up to counsels and the defendants here, I am satisfied that they have no right after the preliminary hearing, as far as I am concerned, unless they can raise some technicality, that I don't know anything about.

MR. FLESSAS: So, in other words, what the Court is saying, is if there is a bindover, it also -- there will also be an order this information should be released to the defendants without any further proceeding?

THE COURT: All I can tell, you at this moment I am giving you curbstone opinion, and my curbstone opinion is I would order the records be disclosed to you and your co-counsels and defendants unless the district attorney can show me some legal reason why I have no authority or jurisdiction to make

[p. 15]

this order.

No, that is all I can tell you. I haven't heard from her. Is there any objection to that, Counsel?

MS. CHRISTENSON: I don't believe so, Your Honor. I don't know what is involved over in the Clerk's Office. I have said after this proceeding we will make all discovery available to the defendants.

THE COURT: based upon your statements, it's the order of the Court at the conclusion of the preliminary hearing, in the event there is a - there are bindovers, that all that you are requesting may be maid available to you.

MS. CHRISTENSON: But the Court isn't saying it has to be done within 10 or 15 minutes of our leaving this room, are you? You're saying --

MR. FLESSAS: You didn't say anything. You said it can be released. If we can walk over and get it --

THE COURT: It should be unsealed.

MS. TAN: Your Honor, I do have one other motion to make prior to testimony being take here. I will move to dismiss the criminal complaint.

THE COURT: I can't hear you.

MS. TAN: I move to dismiss the criminal complaint, and the basis for my motion is that the

* * *

[p. 54]

MR. FLESSAS: Your Honor, would the Court consider modification of the bail as far as Scott Heimermann is concerned to a reasonable amount? It's currently set at $250,000.

MS. CHRISTENSON: Your Honor, this State would oppose bail consideration at this time. There's no written motion filed. I would also request that we get a date before the assigned judge, who is Judge Gram, sometime next week so that we can make sure there's been new counsel appointed for Mr. Isajiw. If Mr. Flessas wants to file a written bail motion at that time, it can be heard then.

THE COURT: That would be the appropriate way to do it in a case such as this.

MR. HAYES: I'll take the date and report it to the Public Defender for purposes of their giving the case to somebody else.

MR. FLESSAS: Would the file clearly show that the transcript of the search warrant and the affidavit should now be released?

THE COURT: It will be the order of the Court the transcript and affidavit should be released to counsels.

MR. FLESSAS: If you want to limit it to counsel, fine, so it doesn't go out to the public, but I

[p. 55]

think we are entitled to it.

THE COURT: All right, I'm giving it to counsels.

MS. CHRISTENSON: Can you give dates before Judge Gram? We want a arraignment before the Court since there will be a new attorney being appointed.

THE CLERK: Counsel, approach the bench. We'll set a date.

The next date, May 23, 1991, 8:30, Branch A (Adam) F, Judge Gram, for arraignment and set date.

MS. CHRISTENSON: Thank you, Your Honor.

(End of proceedings. )

**Internal Revenue Service**
**Memorandum**

Date: April 21, 1991

To: Assistant District Attorney Jon Reddin
Milwaukee County

From: Special Agent Michael Spang

Subject: Interview Report

On January 15, 1991 Detectives Robert Miotke, Mark Jansen (Washington County) and I interviewed Edward J. Piscitello at a restaurant in the Milwaukee area. The interview focused primarily on Piscitello's knowledge of the Outlaw Motorcycle Gang and related matters. During the interview Piscitello asked to speak to me in private, and he provided the following information:

1. Piscitello admitted killing two "BOS" gang members, who he said had killed Max Adonnis. Piscitello "owed a favor" to a part owner of Sally's Steakhouse. The "owner" asked Piscitello to commit the murder, and he (the owner) provided the weapon that was used in the homicide. Piscitello implied that a second person was involved in the shooting, but he did not identify this individual, or the previously described "owner".

2. Piscitello described the two victims as being seventeen (17) and nineteen (19) years old. He also stated that they were both black males. One of the victims told Piscitello immediately before the

shooting that he wanted his "mom" told where he could be found.

3. Piscitello then asked me how he could get immunity for testimony with respect to the above information. I told Piscitello that he should have his attorney contact me or U.S. Custom's Special Agent Buford Gates.

Piscitello also telephoned me after the interview and stated that he was going to cooperate. Piscitello has not contacted me since that time. Attached to this memorandum are copies of by notebook entries with respect to all contacts with Piscitello. These notes were made during, and shortly after the respective interviews.

/s/ Michael Spang
Michael Spang
Special Agent

---

1/15/91 re: CS EP
Phone 6:45 PM

(1) CJ wants to cooperate – I am girlfriend in trouble in Ohio for $2200 theft – Dues that he/she has to come up with all the facts through his attorney

(2) DOB / 12/29/53
SSN 395-62-4388

*Memo* Called Gates – will restrict my involvement to AOA & R.R. CJ has provided reliable info in the past.

1/15/91 CJ/Miotke & Jansen
10:45 - 12

(1) ~~[Illegible]~~

(2) Dreiser or Millazzo – Attorneys
Edward J. Piscitello

(3) Max – 2 BOS members – & is 17 – one is 19 – they are dead – one of them told CJ to "tell his mom" before he shut his eyes – CJ owed favor – suspect gave him a gun & instruction order came from past owner of Sally's &

~~[Illegible]~~

(5) Outlaw drug activity in To's – controlled east side

(6) has info on [Illegible] – Ansteth – Hugu – [Illegible] brothers

(7) John is [Illegible] son – the one indicted is a cousin

(8) discussed immunity letter

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**Wisconsin State Public Defender**
315 N. Henry St. – 2nd Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087/
Fax Number: 608-267-0584
www.wisspd.org

[LOGO] *Protecting Justice for all Since 1977*

**Nicholas L. Chiarkas**
State Public Defender

---

January 8, 2004

Edward J. Piscetello #89444
c/o Columbia Correctional Institution
2925 Columbia Drive
P.O. Box 900
Portage, WI 53901

Re: Court Case #91CF911492 and 91CF911618

Dear Mr. Piscetello:

Your case file by Attorney Jill Tan has been located and retrieved from the state's Records Center. Enclosed are copies of Attorney Tan's notes as you requested in your letter of December 15,2003.

You had also requested vouchers regarding investigative work and the name of the investigator in this case. The record indicates there was only one staff investigator, Bill Seiden, who retired from state service almost three years ago. Staff investigators are not required to submit vouchers, and at that time they were not required to record their hours of investigative

work on a case either. Consequently, I have no further information regarding the case investigator.

Thank you for your patience, and good luck in your legal pursuits.

Sincerely,
/s/ Karen Thomas
Karen Thomas
Executive Staff Assistant

Enclosures

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Piscetello MCJ
6/7/91

332-4640

Buford Gates Feds
bail motion – can get up to $150,000
Bobby Theno Benny Hefner

Witness Protection People
1.) Barry DeBraska
2.) Lori Weber
gave $300.00 plane ticket to Phoenix said call called every day. Costillo was supposed to have $500 or so. But didn't have $. called back. Talked to O'Keefe Place on Van Buren in Phoenix. O'Keefe sent $100.00. Scott Langheart in New Jersey
603-878-1694
Δ made call to O'Keefe who said would put on credit card. Called collect.
Barry & Ron nothing would happen as long as Δ didn't do the shooting.

Then got $1,000 while still in Phoenix
"Around the Globe" code word [in name John Connors]

Was in wholesaling, retailing & met Scott L. who suggested he go to San Diego where business would be better.

Called Barry – was waiting for $ from Castillo said call back wanted enough $ to get out of witness/protection

DeBraska agreed to allow Δ to return to Milwaukee & got $400.00 to pay for ticket.

Wanted to return to Milwaukee to deal w/situation.

Gave DeBraska phone # where he was @, then detectives came to pick Δ up for 2 counts of 1st ° Intentional Homicide.

Then made statement to Castillo in San Diego & put Scott & Joe in it. Scott then put Joe & Ed there, too.

John Briseneus – keep as reserve.
Bobby Theno – picked up tab

(1) Supplemental Discovery Demand re: Witness Protection Program

(2) Contact Feds. re: info on Max Odonis

(3) Medical Records release for Columbia
Holy Cross in Fort Lauderdale
Providence Hospital in Cinncinati [sic]

(4) Western Union records & phone records from Phoenix & San Diego.

Closing Notes

DeBraska Pager 575-9312

Proof of religious commission (coming forward)

bargain
corroboration

Why would Ed kill T.C. when Joe was the person shorted on cocaine?

Joe – forensic evidence doesn't support Joe's version of how the shooting occurred all, but one bullet wound is basically horizontal – with 2 actually angling upward which is completely inconsistent w/Ed standing at the top of the stairs shooting down at T.C. & Dion. You saw the stairs – they're steep & narrow.

Why kill T.C. – was in a position to make T.C. squirm w/o killing him. Could even rip him off on a regular basis w/o killing him. He had taken care of T.C. by setting him up to be busted

gangster wanna be

Ed talks a good line –

1) work w/the cops

2) play by man on the street

Asked by the cops to do illegal thing & he does them. Asked to participate in illegal activities. When he

Ed Piscetello McJ. 11/12/91

[Illegible] knew about Bobby Theno – re: Scott [Illegible] about Ed going to cops

(city) Grand Hotel – real tall detective whose wife works at training academy

Marks, [illegible]
under cops name

(county) Best Western name Sgt. Mackey

Doctor re: smoking cigarettes/withdrawal

got dope & organized crime connection through unknown [illegible]

Mr. Scott A. Heimermann
P. O. Box 661
Waupun, Wisconsin 53963

November 13, 1998

"Acquitting the guilty and condemning the innocent – the Lord detests them both." Proverbs, 17:15.

I have had you on my mind all of these years. I know you have held so much bitterness towards me as well at one time I towards you. However, it's been the Lord who has enabled me to put it all behind, and with this written exchange of my words I hope too. Scott do you have an attorney working on your case? If so please make his or her name available to me. I will make a statement on your behalf. This statement will help you dearly in court. Many things were done wrong against you and me in court by the Milwaukee District Attorney's office that I plan to expose. When this is done it will show you should not be in prison with all that time.

Scott have someone contact me by written correspondence at the address shown.

Edward J. Piscitello
c/o Rev. Richard Tenaglia
P. O. Box 2290
Waukesha, Wisconsin
53187

Write me and share what is needed for you in court. Also, I will write sharing my concerns as well. Be truthfully with me. Remember I put you in prison with

what was called the perfect crime. Therefore, I can get you out as well!!

Bless you
In His Peace
[Illegible] Edward Piscitello

Have you heard from Joseph Isajiw? If so I can't believe it. Let me know where I can send you correspondence.

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**STATE OF WISCONSIN**
**CIRCUIT COURT**
**MILWAUKEE COUNTY**

**Case No. F-911618**

**[Dated November 5, 2000]**

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| STATE OF WISCONSIN, | ) |
| | ) |
| Plaintiff | ) |
| | ) |
| -VS- | ) |
| | ) |
| EDWARD J. PISCITELLO, | ) |
| | ) |
| Defendants | ) |
| | ) |

SUPPLEMENTAL AFFIDAVIT OF
EDWARD J. PISCITELLO

**STATE OF WISCONSIN )**
**COUNTY OF GRANT ) SS.**

Edward J. Piscitello, being first duly sworn, deposes and states as follows:

1. I am currently incarcerated at the Supermax Correctional Institution in Boscobel, Wisconsin, as a result of that rigged conviction - sham and pretense of that Milwaukee Wisconsin judicial process in 1991. I give this affidavit to share the events surrounding my under cover informant work with IRS Special Agent Michael Spang and Milwaukee Police Detective Barry Debraska from 1988 through March of 1991.

2. On November 2, 2000, I had the occasion to meet with Special Agents Joel Jurkowski and Sharon Jarosz of the Treasury Inspector General for Tax Administration, regarding my relationship and the events surrounding IRS Special Agent Michael Spang and Milwaukee Police Detective Barry Debraska relating to their knowledge of events in the above-entitled matter; i.e., the "bodies in the basement" homicides at 941 South 35th Street, Milwaukee Wisconsin.

3. This affidavit is to also ensure Special Agents Jurkowski's and Jarocz's clear understanding of the following events relating to IRS Special Agent Spang and Milwaukee Police Detective Debraska.

4. To provide some background information relating to the above-entitled case, since 1988 I have been a working government confidential informant ("CI") for various state and federal law enforcement agencies.

5. On August 19, 1989, I was on duty with Milwaukee Police Detective Barry Debraska on the criminal investigations involving what would later be tagged as the "bodies-in-the-basement" victims; i.e., Muhammad Binwalee, also known to law enforcement as "T.C.", and his companion, Dion Russell.

6. At some point, I had advised Detective Debraska that Joseph Isajiw and his brother Nicholas Isajiw of Chilton Wisconsin were plotting to murder Mr. Binwalee because Joseph Isajiw had claimed that Binwalee continued to "short" him on cocaine purchases and that, quite frankly, Isajiw had enough. Detective Debraska saw no need at this point and time

to intervene because he didn't want to jeopardize the routine investigative activities of the case against Binwalee and his "Gangster Desciples" street gang for drug trafficking and murder, even if it meant that Isajiw's talk of murder was serious.

7. On the evening of August 19, 1989, I called Detective Debraska by phone from the "south-side" 35th Street residence in Milwaukee and told him that a double homicide had just occured at the 941 South 35th Street residence, and that Joseph Isajiw had in fact shot and killed Binwalee and his companion, Dion Russell. I suggested to Detective Debraska that in order to keep the information gathering stages of the investigation going that the shootings should probably be reported as an accident or that they happened in self-defense because there were weapons found on the victims, but Detective Debraska replied he did not want to report the shootings, and that I should see that the matter be kept quite for now and the bodies be disposed of. He then told me that if I had any problem with that, that he would see to it that I would be charged in the murders. I later called Detective Debraska's beeper by phone from "O-Connor's Pub" located on East Wells Street in Milwaukee that night. Detective Debraska returned my call and again directed that I dispose of the bodies and reiterated that he did not intend to report the shootings and that he did not expect myself to tell anyone either - at least for the time being - all apparently intended to reestablish Detective Debraska's reputation that was fading fast as the "go-to" officer in the Milwaukee Police Department (which I later learned). To my knowledge, Detective Debraska went off duty that night without reporting the murders to his supervisors. From that point on, over a period of 19 months, I discussed the

events of the double homicide with several law enforcement officials, including IRS Special Agent Spang and Detective Debraska, before Detective Debraska, others of the Milwaukee County District Attorneys Office, Milwaukee Police Department and myself concomitantly brought to light the murders through false pretenses on March 7, 1991.

8. Therefore, based upon my personal knowledge of events in this case, that the remaining events in question occured between the months of January 1991 through March 1991 concerning both IRS Special Agent Spang and Detective Debraska. These further events are such as to shed light on the personal knowledge these law enforcement officials had concerning the "bodies-in-the-basement" homicides and their propensity to cover-up their liability in the same.

9. As a whole, the period immediately succeeding my first visit with IRS Special Agent Spang provided myself more time to develop confidence that no serious attention was being provided over the wrong doing of Detective Debraska. Agent Spang told me that he was going to talk with Debraska because Spang had thought that Debraska had a reason behind not doing something at first in connection to the double homicide in 1989. Agent Spang knew from the conversation we had that Detective Debraska was behind in not bringing to light the double homicides, and I trusted that he do the right thing. Again, for clarification, many events unfolded during the time in question: January 1991 through March 1991 when the murders were finally brought to light.

10. First, I was under the impression that both officials (Spang and Debraska) did not know of each other. I first met with Agent Spang when I was introduced to him through the Washington County Sheriff's Department (Wisconsin) in January 1991. It was Detectives of this Department who then left me with Agent Spang. It was on this day that I confessed to Spang on what had taken place at 941 South 35th Street in 1989, regarding the bodies of the shooting victims still being entombed in the basement flooring of that residence. I also confessed to Agent Spang that Detective Debraska had knowledge of those murders - both before and after the murders took place. Due to Agent Spang being a part of the "Outlaws" Task Force, I showed him my tattoo and explained to him that I had been working with Detective Debraska under cover since 1988 (the latter part) without a break. This under cover investigation related to "Outlaw" crimes as well as other crimes being committed in the Milwaukee area. I told Agent Spang that the night of the double homicide I was to call Detective Debraska on his beeper and let him know that the deal between the homicide victims, Mr. Binwalee, or Simply "T.C.", and Joseph Isajiw was in order to facilitate Debraska making a gun deal with both T.C. and Isajiw for drugs.

11. This was all set up before that day in 1989; i.e., August 19, 1989, in fact, weeks before this date. This information was also shared with Agent Spang during our first and second meeting in 1991. During the second meeting, I had turned over to Agent Spang some documents pertaining to the Outlaws Club meeting (minutes). Agent spang and myself had an agreement in words that he would make sure that I was Okay, but that it would have to be done by someone else because he couldn't handle it. We talked

about myself not going to jail on account of the double homicide. I took Agent Spang at his word. Since I trusted another federal agent, U.S. Customs Special Agent Buford Gates, whom I had also worked under cover in connection to other criminal investigations (as Agent Gates was actually the agent who had referred me to the Washington County Sheriff's Office in January 1991), I had felt that from Washington County on down that everything was Okay. From this point on we would have phone conversations and would meet occasionally at the Ramada Hotel in downtown Milwaukee or at the bar next to it. Sometimes we would also meet at the Greyhound Bus depot in downtown Milwaukee. During these times, many crimes were discussed in the Milwaukee area which we had talked over. During my meetings with Agent Spang I had also continued to work with Detective Debraska.

12. More and more I had felt as time went on that something was amiss, but since I was working with these law enforcement officials, I assumed that the only thing I could do was trust in their professional judgment regarding the issues at hand.

13. Agent Spang was told by me that the reason why Debraska never reported the 1989 double homicides was due to his ongoing investigation and Agent Spang concurred with Detective Debraska's assessments.

14. I called Detective Debraska and told him that Agent Spang was told about the 1989 double homicides. It was apparent from my conversations and meetings with these officials that each knew of the other. I trusted that both of these officials would work

out the details of bringing to light the 1989 double homicide.

15. Detective Debraska shared with me that one thing important to remember in the 1989 double homicide was where Joseph Isajiw disposed of the victims' bodies. I was told by Detective Debraska to not say anything regarding these homicides until the ongoing criminal investigations against Max Addonis (a Milwaukee reputed mob figure gunned down in Milwaukee in 1989), Bobby Theno (drug dealer in Milwaukee) and the Isajiws were completed. This information was also shared by me to Agent spang. Both these officials (Debraska and Spang) told me that everything would work out in the end, and I trusted these officials since they were law enforcement officials. Both Detective Debraska and Agent Spang told me that as long as the double homicide remained just that for the time being that the other criminal investigations against Addonis, Theno and the Isajiws could be successful. Agent Spang further rejoined that I trust in Detective Debraska's judgment since the double homicide did take place under his watch.

16. I trusted these law enforcement officials and had no need to doubt that what they were doing was for the greater good of all investigations. I now realize that I misjudged these officials in their entirety. When I did question their ability to function as honest law enforcement officials, I would inquire with other law enforcement officials to see how they would explain matters on a hypothetical basis.

17. It was when I started to doubt Detective Debraska and Agent Spang where I finally told them that I intended to bring the 1989 double homicide to

light via other law enforcement. It was based on this position where finally both Detective Debraska and Agent Spang decided to assist in bringing to light the 1989 double homicide on March 7, 1991.

18. On March 8, 1991, Milwaukee Deputy District Attorney Robert Donohoo, Milwaukee Police Detective Brian O'Keefe with Detective Debraska as proxy, including myself, appeared secretly in the Chambers of the Honorable Audrey Y. Brooks, Milwaukee County Court Commissioner, for the purpose of obtaining through false pretenses the search warrant for the Milwaukee residence, 941 South 35th Street, which warrant was being obtained in order to finally bring to light the entombed bodies of Mr. Binwalee and his companion, Mr. Russell. The March 8, 1991, search warrant proceedings were therefore rigged to such an extent that they were a proceeding in name only.

19. Following the return of the search warrant and removal of the entombed bodies in the basement, on March 11, 1991, I underwent a polygraph exam at the solicitation of Deputy District Attorney Robert Donohoo and then acting Milwaukee Assistant District Attorney Jon N. Reddin. Donohoo and Reddin solicited favorable polygraph test results in order to sustain my veracity of the truth as to my allegations relating to the 1989 double homicides and events to data. The polygraph examiner, Richard Heath, sent the test results to Donohooo and Reddin along with a report stating that the analysis of my polygrams revealed no attempted deception of the relevant questions. And that it was this polygraph examiner's opinion that I had been truthful in my answers during the polygraph examination. I took the tests in reliance upon

Donohoo's and Reddin's assurance that the results would be admissible in a Court of law, if necessary, for credibility purposes. Donohoo and Reddin told me that as long as they had favorable polygraph results, I would no longer be needed for future court appearances regarding the 1989 double homicides. Under these circumstances, Donohoo and Reddin decided that I should be placed in the Witness Protection Program, posing also that I never have to return to Milwaukee. On March 13, 1991, or there about, both Donohoo and Reddin drove me to the Milwaukee Mitchell Airport where I boarded a plane, under a given assumed named, **Joe Connors**, and I was flown to the State of Arizona, where I then entered the Witness Protection Program along with the assured promises by Donohoo and Reddin that I would never return to Milwaukee Wisconsin.

20. After I completed these polygraph exams and I had entered into the Witness protection Program, the dynamics of the situation suddenly changed. It seems now apparent that the true cause for my later arrest and subsequent criminal conviction in the 1989 double homicides was for no other reason than to simply get me out of the way and to discredit me in the process due to my personal knowledge of the events as they actually transpired in this case.

This affidavit is of my own free will and I am willing to state the foregoing facts in a Court if called upon. This affidavit is also a true and correct version of these events in the above-entitled case, to the best of my knowledge, and it does not exhaust my knowledge of the events to which it refers.

/s/ Edward J. Piscitello
Edward J. Piscitello

Subscribed and sworn to before me on
this 5 day of ~~November~~ December, 2000.
/s/ Kelly M. Coon, State of Wisconsin
Notary Public
My commission expires May 2, 2004

**STATE OF WISCONSIN MILWAUKEE COUNTY**
**CIRCUIT COURT**
**BRANCH 33**

State of Wisconsin,
Plaintiff

-VS- Case No. F 911618

Scott A. Heimermann,
Defendant

**AFFIDAVIT OF EDWARD J. PISCITELLO**

**STATE OF FLORIDA** )
) SS.
**COUNTY OF MARTIN** )

Edward Joseph Piscitello, under Oath, deposes and says:

1. I am currently a resident in the State of Florida Department of Corrections system via Inter-State transfer from Wisconsin Department of Correction system on April 3, 1996.

2. My actual whereabouts cannot be disclosed due to the fact that I am classified as a "protection case" arising out of concerns for my personal safety with respect to past and present capacities as an active Government confidential informant.

3. I testify that I have personal knowledge of the information contained in this affidavit. I give this

affidavit for the purposes of Scott A. Heimermann's criminal conviction and relevant Court proceedings arising from that judgment of conviction.

4. I testify that I was a Co-defendant in the subject matter authorizing Mr. Heimermann's judgment of conviction in *STATE OF WISCONSIN -VS- SCOTT A. HEIMERMANN*, Milwaukee County Circuit Court Case Number F-911618. As of December 20, 1991, I stand convicted of two counts of first-degree intentional homicide, party to a crime, for the murders of Mohammad Binwalee, also known as "T.C.", and his companion, Dion Russell.

5. I testify that, since my own judgment of conviction, on December 20, 1991, I have had no communication with Mr. Heimermann, his Attorneys, Agents, Ect [sic]. It was I, a Government Confidential Informant, a key, and only, eyewitness for the Milwaukee County District Attorney's Office, where I helped make the case against Mr. Heimermann at the search and arrest warrant proceedings, and then at his trial. It is through my converged Religious beliefs in God, where I swear under Oath that the proceedings in this matter, from start to finish, were nothing more than a planned illegality on behalf of the Milwaukee County District Attorney's Office and progeny.

6. On March 7, 1991, I reported the murders in this case, the location of the bodies, and the vivid facts of the crime. It was at this point, where I asked for a "nonprosecution agreement" where Milwaukee Senior Deputy District Attorney, Robert Donohoo, and other Milwaukee Officials granted my request and agreed not to prosecute me for my own role in the earlier, August 19, 1989 murders. In return, I agreed to testify

live for Donohoo at the March 8, 1991, search warrant proceedings where I was Donohoo's chief eyewitness. I was never taken into custody, and neither my person nor my residence was ever searched. After I testified at the March 8, 1991, search warrant proceedings, I was administered a Polygraph examination where it was determined by a Polygraphist from the Milwaukee County D.A.'s Office that my information provided up to this point was truthful. Then, due to concerns for my personal safety, i was placed in "witness protection" and flown to the State of Arizona. Later, on April 15, 1991, a Milwaukee Magistrate issued arrest warrants in this matter based solely on the information which I had provided at th [sic] earlier March 8, 1991, search warrant proceedings.

7. I testify that, on March 7, 1991, the information which I had provided "Donohoo and company" was that prior and up to the time of the two male victims' death (August 19, 1989), Milwaukee Police Detective Thomas Gorecki, who at that time was assigned to the Federal Drug Enforcement Administration ("DEA), and Milwaukee Police Detective Barry Debraska Jr. were lead Officers in a drug investigation against "T.C." and other members of the "Gangster Deciples" street Gang for drug trafficking offenses including murder in the Geographical area of Chicago and Milwaukee. I was the Government Confidential Informant for these Police Officers where I provided insight and assistance as to how to investigate certain matters with respect to this street Gang and its memebrs [sic]. Due to my assistance, several of "T.C.'s" Gang affiliates were ultimately prosecuted and convicted for various drug trafficking activity. At the time of his death on August 19, 1989, "T.C." had become a Federal Bureau of Investigation ("FBI") top ten fugitive wanted by the

FBI for a Chicago Gangland murder of David Curry on July 3, 1988.

8. I testify that on March 7, 1991, I told Donohoo and company that I, as well as, Joseph Isajiw and others were actual actors in the murders. At no time did I ever name Scott A. Heimermann as an actual actor in the murders. While I named Mr. Heimermann as being present during the crime, I also told Donohoo and company that Mr. Heimermann had obtained a signed offer-to-purchase the residence of 941 South 35th Street from my parents who were Executors of my Aunt's Estate of which the residence had belonged to. I told Donohoo and company that the actual murder plan was never discussed in Mr. Heimermann's presence. I told Donohoo and company that the actual murder plan was discussed between others and myself and; later, the actual murder plan was discussed between Joseph Isajiw. I told Donohoo and company that the actual murder plan as discussed between Mr. Isajiw and myself was discussed at a Restaurant on the day of the murders (George Webb's Restaurant at the corner of South 35th Street and National Avenue in Milwaukee). I told Donohoo and company that at no time was Mr. Heimermann actually aware of the murder plan nor could he have been actually aware of the same. Indeed, Mr. Heimermann was at the residence (941 South 35th Street) sleeping during the time Mr. Isajiw and myself later discussed the vivid details of the actual murder plan. In short, Donohoo and company was fully informed by me that Mr. Heimermann neither instigated nor encouraged Mr. Isajiw, others or myself to act in the murders. In addition, Donohoo and company was fully informed by me that Mr. Heimermann was never mutually aware of what Mr. Isajiw, others or myself were about to do

to "T.C." and his companion, Dion Russell, nor did Mr. Heimermann participate in the commission of these murders. Finally, while I informed Donohoo and company that Mr. Heimermann had pawned the personal jewelry from the two male victims, I also informed Donohoo and company that Mr. Heimermann did not personally take the jewelry from the victims. It was your affiant who was the individual who had taken the jewelry from the two male victims, and later, it was at my behest where Mr. Heimermann had pawned the jewelry ***for*** me. Mr. Heimermann was never privy to the jewelry which he had pawned was actually that of the two male victims until, ***after the fact***. The purpose of effectuating the pawning of the victims' jewelry in Mr. Heimermann's name was in order to preclude him from ever reporting the 1989 murders to the Police. Donohoo and company were aware of these facts.

9. I further testify that, I informed Donohoo and company that, during the time Mr. Isajiw and your affiant were discussing the actual murder plan at the George Webb's restaurant, Mr. Isajiw had made a telephone call from the restaurant to his brother Nicholas Isajiw in Chilton Wisconsin. I informed Donohoo and company that I over heard Mr. Isajiw say to his brother Nicholas that he [Joe] would not be back to Chilton [Isajiw's home town], until later sometime Sunday; i.e. August 20, 1989. I heard Mr. Isajiw say the reasons for his delayed arrival back to Chilton were because he [Joe] and your affiant were "going to kill that nigger" ["T.C."], due to T.C. ripping him [Joe] off on several cocaine purchases. I further informed Donohoo and company that immediately after the murders that I witnessed Mr. Isajiw again telephone his brother Nicholas, in Chilton, from the 941 South

35th Street residence, where Joe asked his brother Nicholas about "wrapping the bodies". I further informed Donohoo and company that the weapons used in the murders were supplied by Joe and his brother Nicholas.

10. I testify that consistent with the information provided to Donohoo and company in 1991, I further confessed the facts of the murder in letters to Milwaukee A.D.A. Karen Christenson and other Government Law Enforcement Officials over the years with whom I corresponded through the Truth Bible Church in Waukesha Wisconsin. My letters described the initial actors in the murders in sufficient detail that it further exonerated Mr. Heimermann and which demonstrated Public Official Misconduct in the prosecution of the above-captioned case. I asked Ms. Christenson and other Government Law Enforcement Officials to forward the contents of the letters to the necessary Law Enforcement for prosecution, which to my knowledge they did not.

11. I also testify that, consistent with the information I provided to Donohoo and company in 1991, that Milwaukee Police Detective Barry Debraska Jr. and others from the Milwaukee Police Department were fully aware of "T.C." and his companion's death *prior* to the time these murders were brought public via the search warrant of March 8, 1991. Indeed, on the night of the murders (August 19, 1989), I personally telephoned Detective Debraska from the 941 South 35th Street Residence, and later that same night, I also telephoned Detective Debraska from "O'Connor's Pub" which is located on East Wells Street in Milwaukee, where I had advised Detective Debraska about the situation regarding the murders.

Then, 19 months later (March 7, 1991), at the behest of Detective Debraska, Detective Debraska and your affiant marched into the Milwaukee Police Administration Building where we together met with Milwaukee Police Detectives Ronald Castillo and Brian O'Keefe, and confessed to these Detectives and later Donohoo the vivid details surrounding the murders. The very next day (March 8, 1991), while I testified live at the search warrant proceedings for Donohoo, the Detectives affirmatively confirmed my story and vouched for my reliability as an long time informant for the Milwaukee Police drug Unit.

12. In this truthful affidavit I testify that as a key, and only, Government Confidential Informant in the March 8, 1991 search warrant proceedings, and the conviction of Mr. Heimermann, that Donohoo and company would compel your affiant to experience chagrin by breaching the "nonprosecution agreement" – and where your affiant was placed in the position to assist in bringing to light the earlier 1989 murders via live testimony at the March 8, 1991, search warrant proceedings – all as an exploitation of a planned illegality – in order for no other reason than to "cover" for Detective Debraska and other Milwaukee Officials' knowledge and liability in the murders. For example: When the preliminary proceedings were completed in the above-entitled matter, a surprising developement [sic] occured [sic]: I, as the reliable confidential informant, was no longer credited. Joseph Isajiw had now entered the picture as the prosecution's "dispositive" evidence. Isajiw plead guilty to two counts of first-degree intentional homicide and agreed to testify for the prosecution against your affiant and Mr. Heimermann. The prosecutor decided to try me first. There, at my trial, the prosecutor Karen

Christenson, put on the stand the same Milwaukee Police Detectives (Ronald Castillo, Barry Debraska Jr. and Brian O'Keefe), whom had earlier at the March 8, 1991, search warrant proceedings vouched for your affiant's reliability as an Government Confidential Informant. Thier [sic] testimony now provided evidence that I was notoriously ***untruthful*** informant, whose testimony cannot be believed. By convicting your affiant of murder as well as discrediting his own trial testimony where I took the stand in my own defense, the prosecutor succeeded in making me a untruthful confidential informant which the Judge and Jury then ultimately agreed. Of course, the prosecutor did not stick with this version of the events to [sic] long. At Mr. Heimermann's trial the prosecutor vouched for your affiant's credibility as an informant. Now the prosecutor urged that Mr. Heimermann's jury credit my information. In short, as the key, and only, Government Confidential Informant in the case at hand, the Milwaukee County D.A.'s Offcie [sic] used your affidant [sic] as its star witness, then had him cast aside conveniently without honoring the "nonprosecution agreement" – in order for no other reason than to "whitewash" Detective Debraska Jr.'s. and other Milwaukee Officials' knowledge and liability in the murders.

13. This affidavit does not exhaust my knowledge of the events to which it refers. I respectfully represent the foregoing events as trustworthy eyewitness accounts as personally observed and enunciated between the Senior Deputy District Attorney Robert Donohoo and company and myself. I am willing to make myself available to the Court in order to answer any questions with respect to Mr. Heimermann's innocence in the murders, his

illegal confinement and all other instances of misconduct in office testified to herein. In other words, Mr. Heimermann should not be doing the term of his sentence.

14. I make this affidavit of my own free will and not as a result of any threats or promises and I hold that the truth be known so help me God.

/s/ Edward J. Piscitello
Edward Joseph Piscitello

Subscribed and sworn to
before me this 28 day of [Seal]
~~October~~, December 1999
[Illegible]
NOTARY PUBLIC,
STATE OF FLORIDA
MY COMMISSION
EXPIRES: June 20, 2003

**STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY**

**BRANCH 10**

**Court File No.: 02-CV-008254**

STATE OF WISCONSIN EX REL., SCOTT A. HEIMERMANN,

Petitioner

VS.

GARY R. McCAUGHTRY, Warden Waupun Correctional Institution,

Respondent

## AFFIDAVIT OF EDWARD J. PISCITELLO

**STATE OF WISCONSIN )**
**) SS.**
**COUNTY OF COLUMBIA )**

Edward J. Piscitello, being first duly sworn, deposes and states as follows:

1. As a result of having been arrested as a party to a crime to the August 19, 1989 shootings and killings of Mohammad Binwalee and Dion Russell, I am presently housed at the Columbia Correctional Institution, 2925 Columbia Drive, Post Office Box

0900, Portage, Wisconsin 53901-0900. I am personally familiar with the contents of this affidavit.

2. It came to my attention that petitioner Scott A. Heimermann has filed a petition for writ of habeas corpus seeking his immediate release into the community in the above-referred to matter.

3. Since the late 1970s, I was an employee and agent for the City of Milwaukee Police Department in the capacity as an undercover government informant. During which time, Milwaukee police detective Glen Lewis was my law enforcement handler. In following years, our crime-fighting efforts were very successful in bringing down well organized criminals and organizations to justice for running narcotic rings in the geographical area of Milwaukee, including Tony Peters, Joey Vokes, and Balistreri family, the infamous and reputed mob family in Milwaukee.

4. At all material and relevant times hereinafter mentioned, and beginning in October 1988 and continued through at least March 1991, I was an employee and agent of the City of Milwaukee Police Department. During this time, Milwaukee police detectives Barry Debraska Jr., and Thomas Gorecki (the latter a liaison for the Milwaukee Drug Enforcement Agency), were my law enforcement handlers. In these years, our crime-fighting efforts were very successful to a certain point in bringing down criminals and organizations to justice for running narcotic rings in the (and outside) the geographical area of Milwaukee. A list of these certain people and organizations will be made at the end of this affidavit, including members of organized crime,

the Outlaws Motorcycle gang and the Black Ganster [sic] Disciples and Brother of Struggle street gangs.

5. As it is, in April 1989 it had come to our attention that Scott A. Heimermann had been seen by my law enforcement handlers in that he had been associating with certain people that had become the focus of these drug activity investigations. Specifically, Mr. Heimermann had been seen dating a female by the name of Cheryl Brown. Ms. Brown was a former girlfriend of a member of the Tony Glapa et al. narcotic group out of the south-side of Milwaukee. Detective Debraska had been investigating this group for several years without success. A report documenting these investigations, in part, can be confirmed by the documentation submitted herein by U.S. Customs Special Agent Buford E. Gates and are attached as Exhibit 1. These documents were prepared by Agent Gates in the regular course of discovery giving rise to the above-entitled action.

6. In short, Detective Debraska and Gorecki needed to get close to Mrs. Brown in order to hit pay dirt on these ongoing drug activity investigations and Mr. Heimermann was our conduit for purposes of doing so.

7. At any rate, at no time did my law enforcement handlers deem Mr. Heimermann to have been involved in any criminal activity surrounding these April 1989 events. Whereupon, on one particular Saturday afternoon in April 1989, your affiant and Detectives Debraska and Gorecki were working together as partners and thereupon at the behest of my law enforcement handlers it was suggested that I initiate contact with Mr. Heimermann. That I did. I initiated

contact with Mr. Heimermann at a Marquette University campus bar located at 22nd and West Wells Street in the City and County of Milwaukee. Specifically, my law enforcement handlers had obtained information that Mr. Heimermann previously had served as an undercover informant himself for the Calumet County Sheriff's Office (Chilton, Wisconsin) investigating drug activity in that geographical area. My law enforcement handlers also obtained information that Mr. Heimermann had grew up on a dairy farm outside of Chilton, Wisconsin, and in 1986 had moved to Milwaukee and endeavored to make a success in real estate in that city. Further, my law enforcement handlers told me that Mr. Heimermann essentially went bankrupt, but was continuing to seek real estate investment opportunities on a somewhat smaller scale.

8. Because of this, on the pretext that in order to gain Mr. Heimermann's trust, I explained to Mr. Heimermann that my family had owned various real-estate properties on the east-side of Milwaukee, and I explained that my family was in the process of liquidating a two-million dollar estate. I also explained that until my family approved the resolution of liquidating their two-million dollar estate, that Mr. Heimermann could immediately close on a purchase of a property on south 35th street in Milwaukee. This property had belonged to my aunt who had passed away in February 1989. A month or so later, after going through my normal routine such as working Mr. Heimermann into these drug investigations, and showing Mr. Heimermann other various properties not as properties that my family actually owned on the east-side of Milwaukee but as a pretext that my family owned them, Mr. Heimermann believed that he was

about to come out of his real estate slump, and begin making excellent money again. At this point Mr. Heimermann chose to accept my proposed arrangements, signed an offer-to-purchase real estate contract with my family to purchase that south 35th street property, and moved into that property, and became roommates with me at that property. Thereafter, my law enforcement handlers and myself used that property as a means to transact the drug transactions with respect to those ongoing drug activity investigations. These events were part of the trial court record and police reports in the matter of the *State of Wisconsin v. Scott A. Heimermann et al.*, case, Milwaukee county case No.: 91CF911492 and 91CF911618, which can serve as confirmation of the directives issued to me to recruit Mr. Heimermann as an unwary and innocent *de facto* government informant in these 1989 drug activity investigations.

9. During this time, I became a frequent companion in Mr. Heimermann's recreational circle. Mr. Heimermann eventually introduced me to Ms. Brown and other suspects that had become the focus of those 1989 drug activity investigations, including a long time acquaintance from childhood, by the name of Joseph Isajiw. Following these introduction [sic], and with Mr. Heinemann's unwary assistance, I and my law enforcement handlers arranged for several drug buys with Ms. Brown, including several of her own acquaintances from the south-side of Milwaukee, together with Joseph Isajiw and others with an another suspect that had been the focus of these drug activity investigations, by the name of Mohammad Binwalee. Mr. Binwalee had been known among my law enforcement handlers as a high-ranking member of the Black Ganster [sic] Disciples and Brothers of

Struggle street gangs. Exhibit 2 shall serve, in part, as written confirmation of these drug transactions and that Mr. Binwalee and his confederates were suspects in these drug activity investigations leading up to his death on August 19, 1989 at the south 35th street residence. These documents were prepared by detectives Debraska and Gorecki in the regular course of the 1989 undercover drug activity investigations of Binwalee et al., and made part of the record in Milwaukee county case no. 91CF911492 and 91CF911618.

10. Several weeks before the double homicide occurred, I personally learned through my law enforcement handlers that Mr. Binwalee had been arrested by Milwaukee police on traffic violation, and later after detective Debraska learned of Mr. Binwalee's arrest, he cut a deal and let him back on the street in order for us to tail him to see what else he would be up to.

11. Following Mr. Binwalee's release from the Milwaukee County Jail, and during the normal routine such as the drug transactions with respect to these drug activity investigations, I received information that a "hit" of Mr. Binwalee was forthcoming. I learned in the regular course of these drug activity investigations that Mr. Isajiw was determined to kill Mr. Binwalee because he was "shorting" Mr. Isajiw on prior drug transactions. I rushed to report this threat to detective Debraska. Unfortuneately [sic], detective Debraska did not take this threat seriously. Just knowing that Mr. Isajiw would attempt to kill Mr. Binwalee was not good enough, according to detective Debraska. Detective Debraska concluded that Mr. Isajiw's threat's [sic] were not genuine, and that acting

on them only ended up paralyzing the entire ongoing drug activity investigations. On the evening of August 19, 1989, Mr. Binwalee and his companion Dion Russell were shot to death by Joseph Isajiw at the south 35th street property.

12. That evening, I reported the full account of these shootings to detective Debraska. As a result, I assured detective Debraska that I no way whatsoever acquiescensed [sic] in the shootings with Mr. Isajiw, and I was then instructed to carry out my guise as having connections with the Outlaws Motorcycle gang and with organized crime in the Milwaukee area. Detective Debraska assured me that this incident would be reported, and then told me to "remember where the bodies were". Detective Debraska told me that Mr. Isajiw would be prosecuted in those shootings, and that the prosecution of the shootings against Mr. Isajiw would be made by using Mr. Heimermann's testimony as part of the prosecution in order to not divulge my undercover role or the drug activity investigations themselves. The trial records and police reports in Milwaukee county case no. 91CF911492 and 91CF911618 serves [sic] as a written confirmation of the directives issued to me on August 19, 1989 by detective Debraska. There Milwaukee County District Attorney Jon N. Reddin and other Milwaukee police tried out a particular way to see if they could strike the right tune for Mr. Heimermann's cooperation in testifying against Mr. Isajiw in order to not jeopardize my role as a undercover government informant and the 1989 drug activity investigations themselves. Mr. Reddin had personally arranged for a prepaid plane ticket to Mr. Heimermann in Fort Lauderdale, Florida with a particular interest of having Mr. Heimermann fly to Milwaukee in March

1991 (after I and my law enforcement handlers had brought the said shootings to light) and to assist the Milwaukee prosecution team in bringing Mr. Isajw [sic] to justice for the murders. But Mr. Heimermann decided against it, thereby igniting controvercy [sic] about whether we had enough information to arrest and prosecute Mr. Isajiw without jeopardizing my undercover role and the drug investigations themselves. Only after Mr. Heimermann refused to fly back to Milwaukee and assist in the prosecution of Mr. Isajiw for the said murders did my law enforcement handlers conclude that I needed to rejoin in the prosecution of Mr. Isajiw. Moreover, written documentation of the aforesaid events of detective Debraska's knowledge of these murders and of the said directives with which he had issued to me on August 19, 1989 is attached as Exhibit 1. Here, in part, it confirms that detective Debraska was known amongst law enforcement offcials [sic] at the time surrounding these August 19, 1989 shootings that his reputation as an effective law enforcement officer was fading fast as the "go-to" cop on the street, that he had a propensity to be corrupt and lie and, therefore, these murders as taking place under his watch command was the last thing that he needed to reestablish his reputation for professional advancement. Furthermore, written documentation of the aforesaid events of detective Debraska's knowledge of these murders and of the said directives with which he had issued to me on August 19, 1989 is attributed by U.S. Customs Special Agent Buford E. Gates's report and statement attached as Exhibit 1. In 1995, (four years after the said murders were brought to light by my law enforcement handlers and myself) Agent Gtaes [sic] had learned that none only than detective Debraska and his confederates of the Milwaukee Police Department had set out to *frame*

Agent Gates in the knowledge of and the covering up of the murders. In other words, why would detective Debraska and his confederates be so concerned about going after Agent Gates, especially when Agent Gates had not been in [sic] involved in the 1989 drug activity investigations and that the murders had already been brought to the forefront on March 7, 1991, four years predating the occuurence [sic] of events by detective Debraska and confederates in 1995. Agent Gates's statements in his reports about detective Debraska and his confederates relates to him being able to prove that aspects of this whole incident were fabricated by detective Debraska and his confederates in the Milwaukee Police Department. It shows reasonable evidentiary value to the fact that Debraska and his confederates had a motive to falsify against Agent Gates in order to keep the spotlight on Agent Gates and far away from Debraska, the actual law enforcement officer who had actual knowledge of the said murders and who directed that your affiant keep his mouth shut about these murders until the time was right.

13. Anyway, the August 19, 1989 shootings didn't get much attention in the following years so I decided to spark some chest thumping by telling Washington County Sheriff Office detectives Mark Jansen and Jack Theusch (the latter is currently the Sheriff of Washington county), including Special Agent Michael Spang of the Milwaukee IRS office of detective Debraska's knowledge of the shootings and my undercover role with respect to the 1989 drug activity investigations that led up to said shootings. Specifically, on January 14, 1991, I was referred by Agent Gates to Washington County Sheriff Office ("WCSO") detectives Jansen and Theusch. The next

day, I was introduced to IRS Special Agent Spang. With the exception of Agent Gates, we all met together where I shared information on criminal activities with many people and organizations. Agent Spang got involved because he was assigned to the Outlaws Task Force during this time. Since the 1970s I was an admitted member of the Outlaws where over the years I had informed on members of that gang. I had come into some information relating to the Outlaws concerning the Washington county murder of Michael Drobec. It was at this meeting, where I had also informed WCSO detectives Jansen and Theusch and Agent Spang to having knowledge of the said August 19, 1989 shootings, including detective Debraska's knoweldge [sic] in the same. I didn't learn at these meetings that detective Debraska and Agent Spang were close friends. When Agent Spang learned of this information with respect to the said August 19, 1989 shootings he told me that he and detective Debraska would talk of bringing this matter to light. Yet, this information of the August 19, 1989 shootings in which I had told WCSO detectives Jansen and Theusch, including Agent Spang were ignored. The information attached as Exhibit 1 serves as a written confirmation of the fact that these law enforcement officials had unequivocal knoweldge [sic] of these murders but failed to bring these shootings to light.

14. When this didn't immediately raise alertness much, I contacted detective Debraska and prompted him to spirit the necessary cooperation in building a case against Joseph Isajiw, who was responsible for the said shootings. Specifically, on March 7, 1991 I called detective Debraska at Milwaukee police headquarters and told him that I was entertaining thoughts to go to the Milwaukee Journal/Sentinel with

the occurrences surrounding the August 19, 1989 shootings. I explained that the choice was totally up to him on how to proceed with these said events. That evening, I voluntarily chose to accept the arrangement provided to me by detective Debraska, and met with him at Milwaukee police headquarters, along with Milwaukee police detectives Brian O'Keefe, Vincent Vitale, Ronald Castillo, Paul Stuhmer, and Milwaukee County Deputy District Attorney Robert D. Donohoo for purposes of approving the resolution of bringing to light the occurrences of August 19, 1989. The affidavit of Robert D. Donohoo shall serve, in part, as a written confirmation of the meeting on March 7, 1991 and is attached as Exhibit 3.

15. Once this March 7, 1991 meeting was established between the aforesaid Milwaukee officials and myself it was agreed that we would use the testimony of Mr. Heimermann to ensure the smooth prosecution of the August 19, 1989 shootings against Joseph Isajiw, and that way no one would have knowledge of my undercover role in the days leading up to those shootings, or have knoweldge [sic] of the 1989 drug activity investigations themselves. As a result, it was also agreed by all parties situated at this meeting that I would not be prosecuted with respect to my undercover role in those shootings, and that I would be placed in witness protection, and given a new identity and relocated within the United States.

16. On March 8, 1991, I appeared with Deputy D.A. Donohoo and detective O'Keefe in the chambers of the Honorable Audry Y. Brooks, Milwaukee County Judicial Court Commissioner, for the purposes of obtaining a search warrant of the residence of 941 south 35th street in Milwaukee, which warrant was

being sought in order to search for the bodies of Mohammad Binwalee and Dion Russell. I was present when Mr. Donohoo, detectives O'Keefe, Debraska and other police officers all agreed to portray the activities of myself and Mr. Heimermann as recruited government informants leading up to and post the said shootings not as informants to the court but simply as a pretext to create a conspiracy – like crime for purposes of the events establishing a condition precedent to the said search warrant proceedings on March 8, 1991 and all criminal proceedings thereafter. As a result, the police officers who had now become involved in the murder investigation were also aware of detective Debraska who was one of the officers investigating the drug activity of Mr. Binwalee and Mr. Russell at the time of their deaths. The trial court record and police reports in Milwaukee case no. 91CF911492 and 91CF911618 shall serve as a written confirmation of these directives issued to me by Mr. Donohoo and other Milwaukee police officers on March 7-8, 1991.

17. That same day of March 8, 1991 the search warrant was executed at the residence at 941 south 35th street in Milwaukee. The transcript of this then – sealed proceeding reveals that with detective Debraska serving as proxy, detective O'Keefe vouched for the reliability of me with respect to giving the Milwaukee police accurate information on drug deals on prior occasions. Both Mr. Donohoo and detective O'Keefe were present when I told the Court Commissioner Brooks that I was present when Joseph Isajiw shot and killed Mohammad Binwalee and Dion Russell and then buried their bodies in the basement. I also named Mr. Heimermann as simply being present at the shootings and as the person who later pawned

jewelry taken from the victim. Mr. Donohoo and detective O'Keefe and other police officers were also aware that Mr. Heimermann had sold the jewelry for me without having any knowledge beforehand that the jewelry had actually belonged to the murder victims. As it was, the return to the search warrant stated that two dead bodies were discovered at the residence.

18. Once the bodies of Mr. Binwalee and Mr. Russell were discovered, I was housed at a Red Carpet Hotel near the Milwaukee Mitchell Airport. This was done because Mr. Donohoo and the police were concerned for my safety as a result of being a long-time government informant.

19. Mr. Donohoo's commitment in the above regard in that I would not be prosecuted in the said shootings, and that I would be placed in the witness protection program, and not to have to return to Milwaukee in connection to the said shootings is not only confirmed by the given fact that he and other Milwaukee plice [sic] had known that I was present at the shootings but is further corroborated, in part, by the the [sic] fact that with this knowledge that I was present at the shootings Mr. Donohoo had arranged with my Ohio attorney Michael Kaiser to annul a pending court proceeding in the Hamilton County Circuit Court (Ohio), where I was summoned to appear in the court of Ohio on an unrelated charge of defrauding a hotel. In short, while I was housed at that Red Carpet hotel Mr. Donohoo took a phone call from attorney Kaiser and I was present where I heard Mr. Donohoo tell attorney Kaiser that I would be placed in the witness protection program as a result of these investigations and, therefore, that I would be unable to appear in the court of Ohio on the unrelated

charges. Exhibit 4 shall serve as a written confirmation of the phone call between Mr. Donohoo and attorney Kaisier in March 1991. This information shows that on an appearance docket sheet in the case entitled *State of Ohio v. Edward J. Piscitello,* Hamilton county case no. B9008502, that a March 19, 1991 entry of a continuation to July 1, 1991 was entered by the Hamilton County Circuit Court, and where at the behest of Mr. Donohoo, attorney Kaisier had filed a motion to withdraw as counsel on April 3, 1991, on the assumption that I would never have to return to Milwaukee again, after I was placed in the witness protection program.

20. The contractual considerations between Mr. Donohoo and myself in that I would not be prosecuted in the said shootings, and that I would be placed in the witness protection program even though Mr. Donohoo and police had known that I was present at the shootings, and that once in witness protection that I would never have to return to Milwaukee in connection to said shootings again, is further corroborated, in part, by the June 6, 1997 affidavit of Edward A. Strutz attached as Exhibit 5. Mr. Strutz confirms that Mr. Donohoo and detectives Debraska and Castillo *personally* had stopped by Mr. Strutz's house during March of 1991, and that these Milwaukee officials collectively (actually unequivocally) told Mr. Strutz and his wife that in no way would I be prosecuted for my undercover role as an informant inasmuch as being involved in the said shootings on activity that I was entitled to perform. This affidavit of Mr. Strutz was procured on my behalf by Milwaukee attorney William E. Fenger, and the [sic] submitted to the Wisconsin State Public Defender's Office on March 26, 1998. Moreover, to demonstrate further that I did my part

here as I was asked to do and then some by Mr. Donohoo and company, and to show that I have been bringing these March 1991 events to the forefront and during the regular course of my trial, I submit a May 20, 2002 letter from my postconviction attorney Diane Erickson where Ms. Erickson confirms that I had written the State Public Defender over the years explaining these underlying issues and, further, due to lack of funding attorney Erickson simply appealed from the record as the late – previous postconviction attorney Mautner had established it – and thus because the State Public Defender failed to fund a meritorious post-direct appellate action the issues between Mr. Donohoo and myself were never litigated at the time in which I faced trial and subsequently on direct appeal. This documentation shall serve as a written confirmation of the fact that I have been pursuing the true events as they had occurred in these meetings with Mr. Donohoo and other Milwaukee police and myself on March 1991. This documentation is organized in chronological order.

21. In addition to the aforementioned events, Mr. Donohoo and Milwaukee County then – Assistant District Attorney Jon N. Reddin prepared statements and affidavits for me to sign on March 13, 1991. Moreover, at the directives of both Mr. Donohoo and Mr. Reddin I was given a polygraph examination with respect to the occurrence surrounding the August 19, 1989 shootings. The results of the polygraph examination showed that I was being truthful in all respects to the said shootings. Exhibits 7 and 8 shall serve as a written confirmation of the statements and affidavits given to me to sign by Mr. Reddin and Mr. Donohoo, including the positive results of said polygraph examination.

22. Once the polygraph examination was completed and that [sic] I had signed the aforesaid statements and affidavits provided to me by Mr. Donohoo and Mr. Reddin, a large amount of money was given to me by these officials, whereupon then driven to the Milwaukee Mitchell Airport by these officials and flanked by several law enforcement officers, where I was placed on a plane and flown to the state of Arizona with a new identity.

23. A month later, however, a new tactic developed: Amid the cacophony of information provided by me with respect to the true occurrences surrounding the August 19, 1989 shootings, Mr. Donohoe [sic] and Mr. Reddin fine-tuned the proposed prosecution against Joseph Isajiw for the said shootings; the earlier tactic of having Mr. Heimermann testify against Mr. Isajiw was not working out as these officials had quite anticipated. Detective O'Keefe told me that because Mr. Heimermann had now made statements to the police touting me as a direct principal in the murders (even though I had recently learned that Mr. Heimermann did not make any such statements, or if he had that the statements were coerced by police), that the police now needed to bring me in from witness protection and try out a particular way to see if they could strike the right tone for Mr. Heimermann's cooperation in the prosecution against Mr. Isajiw in the August 19, 1989 murders.

24. So, on April 19, 1991, I voluntarily returned to the state of Wisconsin in lieu of Mr. Heimermann complicating matters. My return was only to be temporarily, as a pretext to obtaining Mr. Heimermann's assistance in the prosecution against Mr. Isajiw, and without jeopardizing the 1989 drug

activity investigations, including my role as an undercover government informant. Specifically, the police believed that once Mr. Heimermann was assured that I was in custody, he would feel safe, and then tell his full account to police about Mr. Isajiw's involvement in the said shootings. As a result of this plan devised by the Milwaukee officials, I remained confident that the prosecution against me with respect to the shootings were a pretext and that they were never an actual former proceeding. To demonstrate reasonable beliefs to conclude that the proceedings against me in 1991 were a pretext to first persuade Mr. Heimermann to cooperate in the prosecution against Mr. Isajiw, and then to cover up the 1989 drug activity investigations, including my role in those drug investigations, the very evidence offered against me at trial confirms this fact. For example, the prosecution against me centered on three witnesses: Joseph Isajiw, Anne Schrader and Joanne Danbrova. But these individual witnesses were actually targets in the scope of that 1989 drug activity investigation. So the evidentiary matter with which these witnesses were permitted to testify about with respect to showing that I intended to kill Mr. Binwalee and Mr. Russell were matters that these witnesses parroted that actually reflected my activities as that undercover government informant not as an informant (because these witnesses obviously did not know that I was an undercover informant in the investigations against them in 1989) but simply the matter with which these witnesses were testifying about were matters giving rise to that pretext to create this conspiracy – like crime for purposes as a condition precedent in order for the Milwaukee officials to commence the criminal cause of action on March 8, 1991. In other words, because the prosecution had tried the case on activity

that I was entitled to perform with my law enforcement handlers in those 1989 drug activity investigations against Mohammad Binwalee et al., provided me with a reasonable belief that the prosecution against me was feigned from the out-set, and that my return to Milwaukee from witness protection was only to assure Mr. Heimermann that I was in custody, so that he could feel safe, and then tell his full account to Milwaukee police in the developed prosecution against Mr. Isajiw. In any event, after the jury trial, instead of being released back into witness protection, I was convicted of two counts of first-degree intentional homicide as party to a crime, and in imposing the mandatory life sentences, the trial court ordered that the sentences be served consecutively.

25. I further state that in a 1994 postconviction motion brought by my postconviction attorney Mautner in the trial court, Milwaukee County then – Assistant District Attorney Karen Christenson referred to me in her public memo to the court opposing the motion as a "snitch for state and federal authorities". These events were not only a breach of the previous agreements struck between Mr. Donohoo and other Milwaukee police and myself in that these officials would not disclose my role as a longtime government informant but these events by Ms. Christenson now put my safety in grave jeopardy within the Wisconsin state prison system.

26. Ms. Christenson's breach in putting my safety into jeopardy escalated to a point where I was ultimately transferred out of state on April 3, 1996, as a protection management case. During the vast majority of my out-of-state stay I was housed in protective management units. For these reasons, I was

essentially precluded from communicating with the 'outside' world in an adequate manner of the factors that link the aforesaid said Milwaukee offcials [sic] to the illegal prosecution of the 1991 case. Exhibit 9 shall serve as written confirmation of the events that caused me to be placed out-of-state in protection management units as a result of Ms. Christenson's breach. Thus, it was not until my decision to return to the state of Wisconsin in March 2000 and reveal the true occurrences of the August 19, 1989 shootings that Mr. Heimermann could finally begin to present his case.

27. Finally, in a dialogue with U.S. Customs Special Agent Buford E. Gates, he confirms the majority of the fraud and illegal activity with respect to the Milwaukee officials contained herein. In essence, when detectives Debraska and his confederates had learned that Mr. Heimermann had started to make a long list of assertions about what law enforcement agencies' [sic] knew of the circumstances surrounding the said murders, including their- relationship with me in the days leading up to those murders to the courts concerning his own post-direct appellate actions, these Milwaukee officials knew they may get in trouble with the law until they decided to pin the cover up of the murders on U.S. Customs Special Agent Buford E. Gates, that they did indeed falsify against Agent Gates, and did so to keep Mr. Heimermann's spotlight on Agent Gates and far away from these Milwaukee officials, the actual law enforcement officers who had in fact covered up the true occurrences surrounding the murders, whereupon Agent Gates contacted me in Florida in October 1998. It was during this time that Agent Gates and myself assembled an elaborate dossier of information concerning the hereunder cover

up and conspiracy of silence with respect to these Milwaukee officials named herein, and then Agent Gates filed the account of information contained herein with Milwaukee County District Attorney E. Michael McCann himself. However, presumably political considerations and stalling efforts to indict rogue public officials are at work here, to this date Mr. McCann has yet to respond to either Agent Gates or myself. Indeed, to date, no such effort had been made that I am aware of by authorities on a higher level to play a crucial role in bringing the Milwaukee officials mentioned herein down. And therein lies this 1991 criminal cause of action portrayed over the last 11 years as a natural product of the judicial system the transformation of an undercover drug activity investigation gone awry into an intentional shooting and killing of two high-profile drug dealers in retaliation of a drug deal gone bad. My conclusions are that so gross a distortion of the facts in this case cannot be countenanced, and shouldn't.

28. In addition, to further confirm the accounts of the 1989 drug activity investigations contained herein, I list below individuals' names whom [sic] were targets within the scope of those drug investigations and because of my employed role as an under cover government informant in those investigations, these people were surreptitiously surveilled, arrested and prosecuted for various crimes, such as narcotic dealing to prostitution:

(a) Max Adonis

(b) Frank Alioto

(c) Mohammad Binwalee

(d) Cheryl Brown

(e) Joanne Danbrova

(f) Dynel Goldsmith

(g) Sony Harrison

(h) Richard Heintz

(i) Benny Hephner

(j) Joseph Isajiw

(k) Nicholas Isajiw

(l) Earl Jackson

(m) Bobby Lange

(n) Michael O'Connor

(o) Juan Rodriguez

(p) Dion Russell

(q) Anne Schrader

(r) Christine Schroeder

(s) Bobby Theno

(t) Michael Weitstein

(u) Alicia Williams; and

(v) Keith Zerwes

29. The Exhibits to this affidavit are true and correct copies of documents that they purport to be.

30. This affidavit does not exhaust my knowledge of the events to which it refers.

/s/ Edward J. Piscitello
Edward J. Piscitello

Subscribed and sworn to before me
on this 10 day of September, 2002.

/s/ Jodi Risen
Notary Public, State of Wisconsin
My commission expires: 11-24-2002

June 20,2000

Hi Scott,

Attached is the statement you requested of me. Please excuse the tardiness. I have been out of the country plus the statement required considerable research and effort. I don't know if it helps but I am certainly aware of, and convinced that something is amiss in Milwaukee relating to this whole situation. If false accusations can be made against a respected federal agent, then it can certainly happen to others. As I said before, however, you are in a box to prove it. It is also difficult to overturn a conviction if a witness later recants. The court must ask the witness "when you were lying, then or now?" and they don't want to get into that unless there is persuasive evidence.

I cannot send this statement to the FBI. You, however, can. I cannot call them either. Normally investigators call the witnesses. Are you sure the FBI is pursuing an investigation on this matter? They cannot tell you what they are finding out but they should be able to tell you what the alleged violation is at least. What do they say they are investigating?

Who is Atty Kohler by the way? I can't recall ever hearing that name and is [sic] name does not appear in any of my documents, but perhaps you could jog my memory.

I just hope justice prevails.

/s/ Buford

Question

1a Statement concerning police officer Barry DeBraska and my knowledge of his attempts to frame me for my alleged failure to advise competent law enforcement officials about what I knew of the subject murders.

Answer

On March 14, 1991 I was visited by Milwaukee Police Officers Brian O'Keefe and Kevin Stuhmer. This was six days after the bodies were found I believe. Both officers made it appear as a routine peer police request to learn what I knew about Ed Piscatello, Robert Theno and Scott Heimerman. They were interested in knowing what/if any admissions were made by Ed Piscatello regarding his role in the subject murders. I let them look at the relevant files and make photocopies of whatever they needed. When they left my office, I documented this disclosure on Customs Form 191 in accordance with our guidelines. I didn't think too much about it at the time. I didn't know their relationship to DeBraska. Both were beseeching and not at all adversarial. I was under no obligation to share my files with them. I could have sent them packing but I don't believe in that. I thought they had a legitimate law enforcement mission so I gave them not just the information but allowed them to look in my files. Needless to say, there were no admissions or confessions from Mr. Piscatello or anyone else regarding the murders. I provided them with the last known telephone number in Florida that I had for Mr. Heimerman. (As I recall, I was unsuccessful in reaching you. You called me once or twice also without success. Next time I tried reaching you by phone, your

number was disconnected. I thought you had changed your mind about cooperating with me about the telemarketing scams, etc., that you were believed to be involved in).

It wasn't until I transferred to Washington D.C. in 1994 that I learned about the allegations that had been made about my covering up the murders for Mr. Piscatello. In 1995, I obtained the investigative file of our Internal Affairs investigation under a Freedom of Information Act request and learned that O'Keefe stated to our investigators in 7/94 that I had "stonewalled" him and Stuhmer during their visit to office and that I acted as though I had something to hide. I was shocked. As I later recounted to Reddin and then to McCann, I couldn't have been more cooperative. I didn't have to be. They had no right to see my files. I could have ignored them, told them what I wanted, asked them to come back some other time, told them to get me some coffee . . . whatever. If I were guilty of anything I had every opportunity and legal right to tell them to get out. Why didn't I? I am a lot more educated and experienced in the law then they are/were.

It then became obvious to me that when a police officer lies there must be a reason. Knowing now what I know, tends me to believe your story for the same reason. I also later learned that O'Keefe was a friend of DeBraska's. I wondered later why DeBraska himself didn't approach me. I didn't know these two officers. They were sent to get incriminating evidence and when there was none, they had to lie I guess. It also adds to the number of witnesses who are prepared to say the same lie . . . the blue line.

Law enforcement officers and officers of the court have no legitimate reason to lie unless they are covering something up. The question is what is it and can it be proven?

1b. Brief statement of this detective's involvement with Robert Theno and the circumstances surrounding Mr. Theno's girlfriend, Shawn Taylor.

Answer

I do not specifically recall the name SHAWN TAYLOR. I do, however, recall being contacted by a woman who identified herself as Robert Theno's girlfriend. She was a dancer, I believe. She told me that she was being harassed by Barry DeBraska and other Milwaukee PD officers, Costello rings a bell. She was being followed, was receiving strange phone calls, etc. She felt threatened and was frightened. She said she was given my name my [sic] Robert Theno because he believed I was a trustworthy law enforcement officer. I told her that this was not within my investigative authority and advised her to call Milwaukee Police Internal Affairs. I did not obtain a statement from her.

As to why DeBraska would harass her. I was told DeBraska wanted to be in a position to know about any criminal activity by Mr. Theno and his associates. I was told that DeBraska wanted to be the person who arrested Theno and the one to debrief him for the trove of information that he was believed to possess. This was all for selfish professional advancement I guess. I suspect it was intended to reestablish DeBraska's reputation as an effective police officer, a reputation that was fading fast because MMEG had better cops

more willing to spend the time to achieve results. I didn't know that, I learned that.

I know little about Robert Theno's involvement with Detective DeBraska. I have no direct information about them other than they were aware of one another. I heard that DeBraska was investigating Theno for suspected illegal activity. I also heard that DeBraska was worried that I would arrest Theno and steal his thunder, i.e., to have him work on the Theno investigation without yielding any results. This had happened in a prior investigation. One that DeBraska had been involved in for three years without success but one that I had been successfully involved in. I received critical assistance from the Milwaukee Metropolitan Enforcement Group (MMEG) police officers. DeBraska had provided some cryptic information during the information gathering stages of the investigation but declined to participate when it came to actually performing the more routine investigative activities of the case, even when invited to do so. We eventually arrested several individuals, seized houses, cars, etc. DeBraska was upset that he had been "upstaged" and made statements to others, including other convicted criminals, that the feds stole his case and cut him out. That was a lie. He cut himself out when he couldn't be the principal investigator in the case. He was very upset with me for using MMEG's lockup for the arrestees instead of MPD's. I had called him on two occasions as a courtesy to participate in the arrest of the some of the local individuals whom he had been targeting for several years. He went into a petulant tirade about using MMEG detectives and their lock up. He declined my offer to participate in the arrests. I ended up hanging the phone up on him. This event was corroborated. My

supervisor, Gary Peterson and DEA Special Agent in Charge, Kelley Snyder were in my office at the time and heard part of the conversation. I also told them what had just happened.

1.c. The date Detective DeBraska's name first became known to you.

Answer.

I cannot recall the date. It was sometime in 1988 I believe. I heard from other law enforcement contacts that he was a veteran detective and knew much of the criminal activity was occurring on Milwaukee' south side. Because I had some south side suspects, I arranged a meeting with Detective DeBraska to debrief him and to learn what he could tell me about the subjects I was investigating. I subsequently met with him at MPD. His lieutenant, James Kelly, and an IRS agent also attended the meeting.

Question

1.d Any signed or formal statement obtained from Detective DeBraska

Answer

No. We never met again after the initial meeting at MPD. I spoke with him a few times on the phone after that, mostly to invite him to participate in arrests or raids that related to the case I talked to him about originally.

Question

2. A brief statement regarding Robert Theno's knowledge of this case.

Answer

By this case, I am assuming, the double homicide. It would be improper to state what I learned, if anything, from Robert Theno. You would have to ask him. The same goes for any statement, if any, obtained from Mr. Theno. I can tell you that he never told me that you or Eddie Piscatello, et al, killed the two subjects at issue.

Question

The date Edward Piscatello first came known to me

Answer

I believe it was 12/27/90. I first met Ed Piscatello on 1/8/91, I believe.

Question

Did you and Mr. Piscatello ever work together on criminal investigations against Mohammed Binwalee, also known as "TC" and any other of the Gangster Disciples street gang for drug trafficking?

Answer

No. My role was to investigate the international aspects of drug trafficking, e.g., smuggling of drugs and narcotics into the United States. I was not aware

of these names until the newspaper article about their murders was published.

Because of legal restrictions, I cannot provide you with any statements obtained from Mr. Piscatello, if, in fact, they exist. Mr. Piscatello might be more helpful and must speak for himself.

Question 5. The date you first knew IRS special agent Mike Spang

Answer.

I was an IRS special agent before joining Customs in 1988. I knew Spang then and, in fact, at one time I was his supervisor. With his approval, I introduced Mr. Piscatello to Washington County Sheriff's detectives. I believe they later introduced Spang to Mr. Piscatello. They met together on 1/15/91 where, I believe, either a confession or admissions were made about the double homicide in question. I was not present at that meeting.

Question

Provide a statement regarding agent Spang and his knowledge of this case.

Answer

I shared information on criminal activities with many people and organizations while I was in Milwaukee. IRS agent Spang was one of them. He was assigned to the Outlaws Task Force during this time period. I had obtained some information relating to crime involving the Outlaws. Because it was not within my

investigative purview, I obtained authorization to turn the information, and the person providing it, to the proper authority. I believe Spang got involved that way. See above answer to explain Spang's obvious awareness of the murders way before I knew of them. He, in fact, at one point admitted to knowing of the murders on 1/15/91, the date that he met with WCSO and Mr. Piscatello. This fact was conveniently ignored. He and DeBraska were friends.

No, I never obtained a statement from Spang. He was interviewed by our Internal Affairs investigators on 4/28/95. His statement, which I obtained under the FOIA, said that I had not withheld information as far as he knew. This does seem to contradict a statement made by ADA Reddin who told our IA investigators that Spang telephoned him on 4/20/91 and said that he had told me of Mr. Piscatello's involvement in the murders and that I had told Spang that I would "Take care of it." This never happened of course. Spang didn't say the same thing to our investigators. Why not? Is he lying here to avoid risk of perjuring himself to federal agents or is it Reddin lying to further the conspiracy you reference?

According to Spang's statement, he contacted ADA Reddin on 4/20/91 to advise him of the newspaper article, which discussed the murders. Spang said he told Reddin of Mr. Piscatello's possible involvement. Note that Spang stated to another witness that he learned of the murders on 1/15/91. It was he who had heard the confession, not me.

Question:

Do you have any knowledge of attorney Martin Kohler

Answer

No.

Question

Identify SO16MK.

Answer

I think it was actually SA 16MK. I cannot identify this person for you.

Many of your questions, I cannot answer because of protected communication, hearsay, etc. What I can say is that I have firm reason to believe that Barry DeBraska, et al, are lying and are corrupt. I say this because of what he allegedly caused to happen to me. He was not alone in that, of course. I can only say that I became under investigation by our Internal Affairs people after Milwaukee detectives (DeBraska and his partners) advised them that I had covered up the murders of the two individuals you, Ed Piscatello, etc., were convicted of. I obtained documents from Internal Affairs after filing a Freedom of Information request. I kept the pertinent files and followed up with several letters to the Milwaukee County District Attorney's Office. I started with Jon Reddin who was not responsive to my complaint. I subsequently wrote to District Attorney E. Michael McCann himself advising him of Mr. Reddin's failure to respond to my letter. I found Mr. Reddin's lack of concern a bit troubling. I had known him, at least superficially, while I was employed in Milwaukee. I would've hoped that he would have realized the extreme discomfort that these allegations had on me or would have on any

serious-minded, professional law enforcement officer. Mr. McCann did not respond with any interest but merely cited the difficulty they would have in pursuing the allegations I made against DeBraska and his partners in the Milwaukee Police department.

Question

Detail the filings made to the Milwaukee Country [sic] District Attorney's Office regarding this matter.

Answer

I first contacted ADA Reddin on April 22, 1991. I called and heatedly complained about DeBraska's professionalism and behavior. Reddin later said that he recalled this conversation but did not recall more substantive events surrounding the murders. Another anomaly that I recounted in my letter to Reddin after he was interviewed by our Internal Affairs people. I found his casual handling of these statements made by MPD officers both offensive and unprofessional.

On 5/16/96 I sent a letter and exhibits to Reddin. I pronounced my innocence and disgust at this whole matter as well as my belief about who really knew about the murders and why I had been fingered. Basically, everything I thought to be true was later corroborated by the statements made by others (and ultimately you and Mr. Piscatello) or the timeline of events. I carefully tracked each event by the statements made by others involved in this and asked the same questions. Why is this person or that one lying? I also question what happened to the file that MPD said they had regarding my role in this series of events. That file had conveniently disappeared. I doubt

that it ever existed, it would document lies that would place the liar at documented risk.

On May 15, 1996 I called ADA Reddin to advise him that I was sending him a detailed complaint about DeBraska, et al, and their allegations concerning me. I subsequently did so. My complaint, with exhibits, corroborates virtually every detail that is now being told regarding my involvement. In a one paragraph letter dated 6/2/96, ADA Reddin stated that he had very little recollection of the matter about the 'bodies in the basement." (Attached)

On 6/19/96 I sent a detailed letter, complete with exhibits, to MPD Chief of Police Philip Arreola complaining of the lies and deceit displayed by DeBraska, O'Keefe, Stuhmer. When I did not receive a reply, I wrote again, on 8/19/96. On 8/23/96 I received a reply from Chief Arreola's office saying the matter had been referred to MPD's Office of Internal Affairs and that they would notify me of the results of their investigation. I was never contacted as a witness nor did I ever receive notification of the results of their investigation. Because it would logically end up in the DA's office, I guess that is where it died. (Also, Chief Arreola left the department around that time period I believe).

On June 20, 1996 I replied in detail to ADA Reddin's letter of 6/2/96.

On 8/19/96 I wrote to DA McCann complaining of ADA Reddin's lack of concern for the lies that had been promulgated by his law enforcement officers and money that had been wasted as a result of it, not to mention obstruction of justice. I received a reply from

Mr. McCann dated 12/5/96. He spoke of the aged nature of the allegations, lack of legal tools to remedy my assertions, and competing resources within the police department. I replied to him on 12/31/96. On 10/9/98 I wrote again to Mr. McCann after Mr. Piscatello told me of the conspiracy that I always suspected and believed I had proved without his confession. Mr. Piscatello had volunteered an affidavit to this effect and allowed it to be passed to Mr. McCann. I received no reply.

I have attached several documents relating to assertions made in this statement, some whole; other redacted because of sensitive information. I have many others that documented my quest to prove my personal innocence relating to the allegations made against me. My statement, as well, as my involvement is limited as far as the murders are concerned. My key contribution relates to my being able to prove that aspects of this whole incident, at least as they involved me, were fabricated by DeBraska and his associates. It shows their propensity to lie. Presumably there is a corrupt motive for that.

/s/ Buford E. Gates
Buford E. Gates
June 20, 2000

May 15, 1996

Jon Reddin
Assistant District Attorney
821 W. State Street, Rm 412
Milwaukee, Wisconsin 53233

Dear Mr. Reddin,

As mentioned during our conversation today, attached is a rather lengthy summary of events that, I believe, caused me both professional and personal harm. I would like to seek redress from those who wantonly lied and caused that damage.

Last summer, I became aware that I was the subject of an investigation by our Internal Affairs office in Chicago concerning allegations made by [REDACTED] but which I believe were actually initiated by someone in law enforcement. Apparently Mr. [REDACTED] told Milwaukee police officers that he once told me that he had committed a double homicide in Milwaukee and that I told him that I would "Take care of it." I then reportedly failed to disclose this information to competent authority.

I was more than shocked by the allegations. I waited until the investigation was concluded and I was exonerated. I then filed a Freedom of Information Act request and was truly shocked when I got documents relating to this investigation. I read where two Milwaukee Police officers told Customs Internal Affairs investigators that they expected to get a search warrant for my office at U.S. Customs in Milwaukee based on their belief I was withholding information

from them regarding the two south side homicides. I am also aware that you were advised of these allegations by our IA people and were asked to charge me with a crime regarding this alleged obstruction about one year before they even asked me my version of events. The U. S. Attorney's Office was similarly polled. You both declined.

Let me start this again, by saying I was/am stunned. I am stunned that no one ever directly asked me about this, at least during the time period it supposedly occurred. I am also stunned that anyone could put the slightest credence [REDACTED] said, particularly regarding a federal officer wit over 20 years of documented, distinguished service. I am stunned that Milwaukee Police Officers O'Keefe and Stuhmer would/could tell our investigators, or anyone, that they expected to get a search warrant for my office when I, without the slightest hesitation or reason, could have sent them packing when they visited me. Instead, I opened my files on the spot, let them see whatever was relevant and allowed them to copy any documents relating to [REDACTED] that did not contain other investigative material irrelevant to their investigation. That they later have the temerity and indecency to suggest I withheld something from them. . .based on a gut reaction or what [REDACTED] ight have said. I suggest to you. . .as we once discussed rather heatedly concerning officer Barry Debraska, that there is more to this than the stories that have been told.

I also want to say, these are not mere contemporary words fabricated to justify the past. Whatever I say here is documented in my case file and in memoranda attached to the investigation I was involved with at the time. First of all, as any federal agent is taught

(and I taught this topic at our academy), it is standard behavior to document contacts involving any substantive conversations with sources etc. I state now, then, and forever,[REDACTED] NEVER ONCE TOLD ME HE COMMITTED MURDER. If he had, I would have done as I had done with him several times before. I would have turned him over to the agency/department having jurisdiction. I was/am a Customs agent. If he gave me information that was not related to Customs, I called the appropriate agency/department, and documented what he told me and what I did. To illustrate, e.g., [REDACTED] With his concurrence, I turned him over to an ATF agent in Milwaukee (I believe it was Paul Harding). When [REDACTED] I arranged for him to meet with Mark Jansen of Washington County Sheriff's Department. [REDACTED] when he mentioned he knew something about the murder of Max Addonis or abut the Outlaws, I turned him over to Mike Spang of the Outlaws Task Force. [REDACTED] I then called the FBI in Indianapolis (?). When they didn't return my phone calls, I called the Assistant U.S. Attorney in that district so it was not simply ignored and other innocents fleeced. I also advised our Miami office. This too is documented - as is everything I am stating here.

[REDACTED] that he needed to if he admitted to murder), I set it up. I was not even present, nor did I ask to be, when these other officers interviewed [REDACTED] Neither did I seek to censor their line of questioning nor was such censoring ever discussed. If you have any conflicting testimony or sense about this and wonder who should you believe, ask yourself why would I turn this person over to another agency lock, stock, and barrel and then seek to limit their line of inquiry (Particularly if murder was involved. Someone

would have to believe I turned [REDACTED] ver to an agency investigating murder and then tell them not to ask him about murder) ?? Even if I wanted to, how could I? Also, I could have simply done what most other law enforcement officers do, i.e., I could have either buried the information where no one would ever see it, or I could have drafted a memorandum to the affected agency advising them of I had learned. No, I went the extra mile. . . in every case. I did the unprecedented and turned over an "associate" to other police officers. I did so for one reason. I was/am tired of law enforcement agencies bickering about crime and lack of cooperation and then watch them sit on information that would be useful to others. My track record as both an agent and supervisor in both IRS and Customs amply demonstrates that. I never failed to make the effort to get the information to where it belonged..no matter how much of my time it took. I also always attempted to let all affected law enforcement agencies participate in the discoveries of investigative matters when they participated in the investigation. I included other agencies in important debriefings (ask S/A Keith Plambeck-FBI, S/A Larry Kaiser-IRS, MPD's Jerry Staniszak, West Allis PD's Don Yockey, ad infinitum). I am the last guy to not share. If I knew about the subject murders and helped solve them, hell, I probably would have been given the key to the city.

Why did this happen? I can say there is only police officer I didn't see eye to eye with. . . at least according to what I heard, I personally harbor(ed) no such ill feelings. . . and that is MPD's Barry DeBraska. I can't prove to you he is behind this, but I have reasons to believe he is and I expect to ask Chief Arreola to investigate his relationship to [REDACTED] and his

role in these allegations made against me. First, I gave the files, on the spot, to officers O'Keefe and Stuhmer when they appeared in my office on March 14, 1991. Again, I didn't ask them to come back later so I could check to see if I was exposed or whatever, I didn't tell them I would look in my files later and let them know if I found anything. I didn't simply tell them I couldn't or wouldn't share my files and send them away. I got right to it. I had nothing to hide. I had every means and rights to tell them to hit the road. I did not do so.

[REDACTED] dicated he had information about the murder of Max Addonis and the [REDACTED] never panned out according to what I was told by the investigators I shared him with. But again, [REDACTED] told me simply that he knew something about the murders, not that he had done them. Why else did I even share him with Spang, WCSO? If I showed any surprise that day, never any reluctance, to Officers O'Keefe and Stuhmer when they came to my office, it was because I was confused about what murder they were talking about. . . i.e., Addonis or the Drobec's. My God, it is beyond belief that any legitimate, professional police officer would even suggest that I, or any agent would cover up a murder... for what??...[REDACTED] free while risking my career and me freedom? O'Keefe and Stuhmer certainly never suggested any concern or disbelief to me regarding my statements when they came to my office. They couldn't have been more meek and beseeching. It is also telling that they did not bring this allegation to our Internal Affairs office or to you in March 1991, nor did they accuse me until three years after I supposedly obstructed their investigation!! I would also question their veracity and motivation for saying to anyone that they expected to get a search warrant for a federal

officers office. . . based on what? The assertions of [REDACTED] (Even if made through DeBraska, [REDACTED] was the only possible source and the ultimate witness regarding such information). My God, can you imagine. [REDACTED] but these cops did? That is scary. It is no wonder law enforcement is under fire.

It is my view that these guys may have been put up to this by Barry Debraska. I have no idea even if they know him, but I'd bet my life on it that Debraska is the source of this misinformation. I do know that Spang knows Debraska and has for several years but I do not know more. I believe the cops involved were set up by Debraska to do this, perhaps knowingly, perhaps not. It is also obvious that MPD knew of [REDACTED] involvement in the murders by this time and had no real need to meet with me. I am guessing here but I believe they went witch-hunting based on tales told by Debraska to settle an old score. Why did they even appear in my office on March 14. 1991 when, as of March 7th, they had information about [REDACTED] criminal involvement in murder? On April 9, 1991 [REDACTED] called me and mentioned murder information. . . again; not that he had committed murder. When I asked him for details, he insisted on [REDACTED] He wouldn't talk about murder. When I asked him if he had called the district attorney's office with the information, he said it was taken care of. It is certainly true at some point, e.g., when O'Keefe spoke with me and when the homicides hit the paper, and after [REDACTED] made references to knowing about murder, I thought may'e he did KNOW something (as a witness), that is when I called Don Lottarocca, on 4/9/91. [REDACTED] stated to IA investigators that I told him "I'd take care of it"

(presumably his role in the murders) and that we should continue to [REDACTED].

If O'Keefe/Stuhmer simply didn't want to get the facts from me (as is normal), why didn't they simply advise our Internal Affairs office of their suspicions then? They didn't, I suspect, because there was no way the allegations were true and the only way to reach the nefarious goal set by Debraska was to smear me behind my back after I left the area and hopefully not risk my finding out. It is also telling that the file that MPD refers to regarding me was "missing" when the IA investigators interviewed them. What file??

Barry is the only copper with whom I had any discord (at least that I knew of). That related to his (and Jim Kelly) having provided me some background information regarding the [REDACTED] t al group that he had been investigating for several years. . without success. (But then he was attempting buy/busts and did not work the conspiracy angle that was required). At any rate, I got involved in the case and worked closely with MMEG, particularly officers Jerry Staniszak and Chris Novy. Both pitched in with the mundane and with the dirty work. Things paid off. When we were setting up a significant surveillance that I expected would hit pay dirt, I called Debraska and invited him to participate, he declined. Former DEA SAC Kelley Snyder was in my office at the time. I just spoke with Kelley and he recalled this incident. When we were about to arrest some of the conspirators, I called Barry as a courtesy to invite him to participate in the arrests and the debriefings. His only question was where we were going to take the prisoners. I said MMEG. He began a tirade about turf and started to badmouth MMEG. I told Debraska I

didn't have time to listen to his petty complaints and hung up on him. We did the arrests without him. Assets of about $250,000 were subsequently seized and shared, none went directly to MPD because they didn't do anything other than provide us with some background information. Even then, they were not snubbed or anything. I assumed MMEG's success, particularly with Milwaukee police officer Staniszak being recognized and rewarded with asset sharing, also recognized MPD. Only later did I learn of their discontent, discontent that could be spread by only one person, Barry Debraska and, perhaps with Barry as conduit to his boss, Jim Kelly. Barry claimed to others who would listen that he gave me this case on a "silver platter" and then I boned him. I suspect he told this story Lt. Kelly, O'Keefe et al. None of them ever bothered to find out the truth. Barry DECLINED to participate - there are witnesses.

I heard from people on the street back in 1990/1991 that Debraska was badmouthing both me and federal agents in general. Now there is a real professional officer for you, telling bad guys that a fellow officer is an asshole and that they should work for him instead. I also became aware that Debraska and officer Staniszak were/are enemies. My guess is that Debraska had been supplanted by Staniszak as the "go to" officer in the local drug enforcement arena. That would certainly be a true assessment of their respective abilities.

[REDACTED] me that he was associated with Debraska and was associated with Debraska at the same time he was associated with me. [REDACTED] also told me during this period that Debraska was upset about the Robert Theno investigation because he

again had been working Theno for some time without success then I got involved and things got "federal." Then was ultimately arrested in northern Kentucky by the NKDTF - which included one of our agents. [REDACTED] I unilaterally asked the FBI to assist in the [REDACTED] of teamwork and because of their far-reaching statutory authority. I was later told by [REDACTED] (who was sentenced to seven years in prison for his role in cocaine trafficking) and his girlfriend (name unrecalled, she was [REDACTED] ancer at Hoops and her name would be in my case file) that Debraska and an officer with a name like "Costrello" were pulling some dirty tricks on her and she was frightened. I told her to call Milwaukee PD Internal Affairs if she had evidence it was Debraska. She may have done so.

I am attaching relevant documents which I obtained under my FOI request. There are identifiable others who apparently were told of the homicides [REDACTED] on January 15, 1991, and yet I am accused by MPD of covering up something I sincerely knew nothing about. (MPD was made aware of the "suspects" on 1/14/91 and the bodies were discovered March 8, 1991..where were these other officers/agents? Their disclosure should have been timely, certainly timely enough to preempt any such allegation against me or against anyone). Perhaps those investigators told competent authority, perhaps they didn't. I don't know. I will state for the record, neither told me of [REDACTED] onfession about the murders. It would seem to me if the scenario implanted by MPD is to be believed, those who knew of [REDACTED] confession (who only learned of it because of MY efforts to share him) would have told me of it and asked me if I told MPD. . . and if I had or hadn't, they still would have

been compelled to. I recently spoke with Mark Jansen of Washington County SO who corroborated my recollections and my assertions. So that you know, the night I [REDACTED] s.

I never attempted to censor anyone either. They never told me what he had told them..and I couldn't have cared less. I was only concerned if he proved honest and trustworthy or not. Maybe they' reported it to you or some other proper authority. I hope so, but I didn't because I never knew.

I have been cleared by my agency, the U.S. Attorney's office and your office of any wrongdoing. I can simply go on with my life without this headache. I hope that writing now that I am no longer the "target" adds credibility to this document. I do not relish having now to write something that can only cause further disharmony in the law enforcement community. On the other hand, I worked for 15 years in Wisconsin as an agent in IRS-CID and at Customs to gain a reputation for honesty, hard work, and ability as an investigator. I also decry what passes for cooperation among certain law enforcement agencies. In fact, I proposed to both Wisconsin OCDETF AUSA's, Jeff Anderson and Jeff Wagner, that they held the key to ensure cooperation between the agencies, state, and local police. They could enforce information sharing as well as sharing in the glory/excitement of arrests and search warrants if they chose to do so. I did not say these things and practice something different. They are the cornerstone to what I believe in and what I practiced. I refuse to let the dark side of law enforcement portray me as something different. I have too many faults to count, this ain't one of them.

Jon, the truth is important to me. I do not want you or anyone to even faintly imagine I was anything other than what I was and what I continue to be. I refuse to believe that my shared approach to law enforcement isn't what is needed. Guys like Debraska are out of sync with law enforcement's duty to the public. Debraska seemed to have the attitude that if it couldn't be his show, that there would be no show. I'd like to see how many skeletons he has buried in his files.

As is evident, this document contains specific information and the names of real people who can provide corroboration..though I am not sure some would care to, given the obvious. I am simply not stating a self-serving bunch of gibberish in hopes of whitewashing my involvement, a notion apparently foreign to certain individuals. Simple jealousies or personality conflicts should not lead to such assassination. I hope I can teach that lesson to those who soil our profession. If they will do this to me, what will they do to an innocent member of the public who angers them.

Can you answer the following for me?

- Were you aware that I had been accused of obstructing justice relating to [REDACTED] alleged confession to me about murdering the two people found in Milwaukee on 3/8/91? Do you recall who made the allegation against me?

- Were you, or was anyone in the DA's office asked to pursue a search warrant for my office? If so, by whom? Did you see an affidavit

summarizing my culpability? If so, can I get a copy of that document?

- Did [REDACTED] you that he had confessed to the murders to me? To Mike Spang? To Mark Jansen (Washington County SO)? To Barry Debraska? If so, when did he do so?

- Were you ever told by Mike Spang, or anyone, that they told me about [REDACTED] confession? When did that occur? If so, do you have a document summarizing that statement? Can I have a copy?

- Have you ever heard of or seen an MPD file (now supposedly missing) that details my supposed culpability in this obstruction? Can I get it?

- Do you recall the Customs agents who interviewed you regarding my alleged obstruction? Who were they? In your opinion, were they objective and professional?

- If I can prove what I am stating in this document, are their any state charges that are appropriate? This would include MPD detectives, [REDACTED]

- Were you ever presented with anything that made you think I did such a thing?

- Were you ever presented with anything that made you think I did such a thing?

- Do you have any recollection or contemporary notes of any conversations you and I had? When did those conversations occur? May I have a copy of your notes?

- Are you aware if MPD sought or, in fact, did conduct any consensual monitoring on this matter? Did they monitor any conversations with me? If so, can I get copies of the transcripts or tapes?

I did not even get involved in the [REDACTED] until 11/18/90. I believe I first met [REDACTED] 1/8/91. Six days later [REDACTED] with WCSO and Mike Spang. On day later he confessed to them apparently, or again may have simply said he [REDACTED] I have no idea if they told MPD or what they did. I only know no one tole me and had no obligation to do so. [REDACTED] on 3/7/91 that he knows something about the subject murders. I would venture to say he had told his MPD handlers something about this before that date as well, again, not that he confessed, only that he knew something. On 3/8/91 the bodies are found. Why am I even involved in such careless allegations? MPD has made too many reckless and slanderous statements without knowing any of the facts.

Please excuse, the interrogatory - nature of these questions but this means everything to me. I have been told to just forget it. I cannot. It is against everything I believe in. A statement such as "I can't believe he did it" came to mean he told me he did it and I failed to disclose it. Please! I believe two individuals anonymously and recklessly trumped this up in hopes of finding something or simply silently damaging me for perceived slights. Thank God, I

guess, I did document everything I did [REDACTED] What in the world happens to those less conscientious?

If you'd like to discuss this further, I am at your service. My phone number is 202-927-2195. If I need to file a formal FOI-type request to get the documents I've asked for, including those from MPD, can you direct me on how to do that?

Buford E. Gates
U.S. Customs Service
Office of Investigations
Room 5315
Washington, D.C. 22044




OFFICE OF DISTRICT ATTORNEY
*Milwaukee County*
E. MICHAEL McCANN •
District Attorney

[Letterhead Names Omitted]

June 2, 1996

Mr. Buford E. Gates
U.S. Customs Service
Office of Investigations
Room 5315
Washington, D.C. 22044

Dear Mr. Gates:

I have received your letter of May 15, 1996, inquring into a wide range of matters concerning your dealings with officers of the Milwaukee Police Department several years ago. I regret to inform you that I have very little recollection of the matters to which you refer. I do recall having one or two conversations with you on the phone during the time I was investigating and prosecuting the "bodies in the basement" homicide cases. I am unfamiliar with most of the other matters to which you refer.

I am sorry that I cannot be of more assistance to you.

Very truly yours,

/s/ Jon N. Reddin
Deputy District Attorney

JNR/jr

SAFETY BLDG., RM. 412 • 821 W. STATE ST. •
MILWAUKEE, WI 53233-1485 •
TELEPHONE 414-278-4646 • FAX 414-223-1955

June 19, 1996

Mr. Phillip Arreola
Chief of Police
P.O. Box 531
Milwaukee, Wisconsin 53201

Dear Chief Arreola,

My name is Buford Gates. I was a special agent and then the Resident Agent in Charge with U.S. Customs in Milwaukee from 1988 to January 1994. You and I met on several occasions, including the Chiefs of Police conference in Albuquerque as well as the local law enforcement executives monthly meetings. I am presently assigned to Customs Headquarters in Washington, D.C.

I reluctantly would like to report false representations and false statements as well as serious ethical violations made by three members of your department.

Last summer I became aware that I was the subject of a Customs internal affairs investigation for my alleged failure to report two murders to the Milwaukee Police Department. The double homicide was committed by an [REDACTED] apparently alleged to MPD officers, I believe Barry Debraska and then, with Debraska as proxy, to officers Kevin Stuhmer and Brian O'Keefe, that he told me he had committed two murders in late 1989, according to reports I obtained under the Freedom of Information Act on the south side of Milwaukee. [REDACTED] After allegedly admitting to me that he committed murder, I reportedly told

[REDACTED] that "I would take care of it" according to MPD assertions. The implication being that I would seek to cover up these murders to protect [REDACTED] I then reportedly failed to advise the Milwaukee Police Department, or competent authority, of [REDACTED] admissions. Nothing could be further from the truth.

Although there was no evidence to substantiate the allegations made against me, except statements made by the above-named officers, I feel both insulted and harmed both personally and professionally. I can only suspect what might have happened if I hadn't documented my involvement with [REDACTED] or of I hadn't gone the extra mile over and over again just in case his pronouncements did contain some truth to them. [REDACTED] may not know better, each of the officers did. It seems to make no difference to any of these individuals to imagine why in the world I would compromise my career, reputation, honor, and my freedom [REDACTED]

I want you to know what did occur. While I was a working special agent, [REDACTED] after a partner of his, [REDACTED] charges in northern Kentucky on November 18, 1990. One of our agents, Jac Hein, was part of the arresting group, the Northern Kentucky Drug Task Force. [REDACTED]

I believe I first met [REDACTED] on or about December 27, 1990. We [REDACTED] investigator(s) whom I knew to be involved in the alleged crime or who had jurisdiction. I did this on several occasions over the ensuing few weeks. [REDACTED] because I believe in law enforcement sharing at all levels. I am

so tired of hearing police officers complain about lack of resources etc. and then find they simply refuse to join resources to make the fight against crime a joint and meaningful effort. At any rate, in January 1991, [REDACTED] admitted to committing the subject murders but wanted some consideration. In reading their statements I obtained under the FOI, it is my belief that they didn't believe him and that they counseled him to seek counsel before going further.

[REDACTED] Barry Debraska of your department. He told me Debraska had been involved in trying to set up Robert Theno. How that deal ended up in northern Kentucky, I have no idea.

[REDACTED] ief that Debraska misrepresented the truth relating to [REDACTED] the subsequent story about [REDACTED] g to me about committing murder, to O'Keefe and Stuhmer which led them to believe I had known of the murders of the two individuals. They, in turn, passed on this scurrilous misinformation to our investigators without the slightest concern for its veracity. The mere fact that they would allege such illegality on my part and then not bring charges against me when it supposedly occurred is telling in itself. Such a failure to report such criminal behavior by another person (me) would be misprision of felony or obstruction of justice in itself I believe.

Why did this happen? This whole charade is predicated on Debraska's apparent personal dislike for me and his general dislike for federal agents. That, however, is no excuse for providing false information and for making serious allegations about my misconduct to our investigators. This includes stating they expected to get a search warrant for my office at

U.S. Customs! Presumably this is based on probable cause and probable cause in such a case, [REDACTED] They also stated to our investigators that their "file" which presumably contained the evidence relating to my involvement in this matter, was lost. The latter is a convenient ruse. . . no evidence existed because it never happened!

On March 14, 1991 I was visited at my office by officers O'Keefe and Stuhmer (one week after [REDACTED] pparently implicated himself to MPD). They asked what I knew about [REDACTED] relative to their murder investigation. I knew [REDACTED] assertions before knowing something about murder, e.g., the [REDACTED] He never said he did them, and in fact when I probed him about what he knew he only spouted common knowledge/newspaper material. I didn't, however, sit on it then - or ever I [REDACTED] nd IRS agent Mike Spang of the Outlaws Task Force or Washington County Sheriff's Department about the references he made about the murders. I met with [REDACTED] January 14, 1991. I [REDACTED] comfortable being alone with them. I later discovered that he agreed to meet again with them and with Outlaws Task Force agent Spang the very next day. According to a report I received under my FOI request, it was at this second meeting that [REDACTED] dmitted to actually committing the murder. As far as I knew at the time he had led them around in circles too. I was never advised about what he said to them. . . I didn't know nor did I care, except for his credibility should I ever have to use him as a witness.

I did not know Stuhmer and O'Keefe until the day they knocked on my door and asked for help. As I recounted in my letter to DA Reddin, I could have refused them

access to me or to my office, I could have told them I check my files and let them know what I found, I could have told them to take a hike. I did neither. I let them have unbridled access to my files and even let them use our copying machine. Do you know many, or any, federal agent who would do such a thing? Particularly if that agent had something to cover up? The incredulity I later felt when I became aware of their accusations is overwhelming. If they told our investigators, or DA Reddin, that they expected to get a search warrant for my office or believe I obstructed their investigation, why didn't they pursue it when they became aware of it, i.e., 3/91? Does that tell you something? They preferred, it seems, to conduct a scurrilous character assassination which they hoped they would never have to prove or deal with. I was also gone from the scene and so Debraska, I suspect, thought he could vent his unprofessional jealousy with impunity.

Again, if your officers were really concerned about obstruction, proof does exist that others were told by [REDACTED] about his involvement on January 15, 1991, almost two months before he tripped himself up when bringing the matter up with Debraska on 3/7/91 (I suspect it was to Debraska. Maybe Debraska started to get concerned with [REDACTED] involvement himself or he had covered it up himself. I really don't believe that but it is far more likely than what he chose to allege against me. It was an MPD officer that [REDACTED] old about the bodies buried in the basement according to our investigators report). Again, according to that report, [REDACTED] apparently first told Debraska (?) too that he KNEW something about the murders, not that he did them. [REDACTED] If I were an MPD investigator, I'd be

curious about what Debraska knew and when HE knew it, not Buford Gates. Why would [REDACTED] me, a Customs investigator [REDACTED] Debraska/MPD at the time? [REDACTED] MPD must have been told at some time that [REDACTED] confessed to others on 1-15-91, yet two months later Stuhmer and O'Keefe come knocking on my door, I give them the kitchen sink and they then tell DA Reddin, our investigators and who knows who else, that I obstructed justice?? My God, that is insane. Debraska, O'Keefe, Stuhmer probably didn't know and didn't bother to find out that I did exactly the right thing..and documented doing it. Thank goodness I did, I guess. Only a jaded, clearly malevolent person would do this.

Why would Debraska harbor such ill feelings towards me? He is well-known in the police community for his unprofessional behavior, lack of integrity and "dirty tricks." As background, I first met Barry early in an OCDETF investigation in 1990. I was told he had been conducting a lengthy investigation on a south side drug ring. I had a lead from south Texas involving a south side group and was touching bases with all who knew something the south siders. Barry's name came up as having some information on the organization. I arranged a meeting with him, Lt. Jim Kelley, and IRS agent John Schlict at MPD early in the investigation. I obtained some information and probably a few documents (unrecalled). As I got further into the investigation, I became aware that MMEG had significantly more information and were more willing to let me see their files in their entirety. I learned a lot from MMEG files and from MPD officer Jerry Staniszak. I also found officer Staniszak (and West Allis PD officer Chris Novy) willing to do the mundane

and literally do all that they could do to assist me in this drug conspiracy investigation. After several months of painstaking investigation, we got some breaks. We were about to make some arrests. I did not forget MPD. I called Barry, who never helped beyond the first short, sketchy debriefing, and asked if he wanted to participate in the surveillance (which led to about six arrests that Sunday). He declined. Former DEA SAC Kelley Snyder was in my office at the time I made the call and can attest to this conversation I had with Debraska. My supervisor, Gary Peterson, was also present and aware of Barry's unprofessional attitude. (I recently spoke with Kelley in Redmond, Washington and he recalled the event, in fact, he brought it up saying he never believed the story spread by Debraska, and by default his supervisor, Jim Kelley, because he was in my office on that occasion when I called Debraska and Barry declined to go along. Snyder, as is anyone who actually worked with me, also knew of my role in volunteering and sharing information on many cases?

On another occasion when we were going to arrest [REDACTED] another one of the group worked by officer Debraska, I again called Debraska as a courtesy to invite him along. He asked where we were going to take [REDACTED] after his arrest. When I said MMEG, he started ranting about MPD vs MMEG. I hung up on him. I was told sometime later that he was now spreading the story that I had screwed him over, you know "the evil feds taking over and leaving the local police without a thank you." It never happened that way. Debraska declined every invitation to share in the spoils of the case. . . and he had done almost nothing to help, that is the irony!! I later learned that Debraska didn't get along with officer Staniszak and

he was jealous of Jerry's talents and his taking over officer Debraska's role as the "go to" officer in the MPD with others in law enforcement circles. It had little to do with me personally but my use of this rival officer (a true professional in my view, who would do anything for the MPD and for law enforcement). When that case was over, we ended up arresting, charging, and convicting 13 people and realizing about $250,000 in asset sharing. MMEG completed the necessary forms and I was pleased to present them with a Treasury asset-sharing check sometime later.

I became involved in the [REDACTED] case shortly thereafter. This was another case where Debraska was involved for some time and his target was arrested first by the feds and he was angry. [REDACTED] Debraska was upset that he set things up and got aced out. I suspect because I was "taking over" another one of his cases, I became a bad guy. I also later heard from [REDACTED] before he reported to prison that Debraska was pulling some kind of dirty tricks on him and his girlfriend. Debraska was, [REDACTED] hoping to get him to help him nail some other bad actors before went away prison. I advised him and or his girlfriend (name unrecalled, a nude dancer at Hoops) to call MPD Internal Affairs if he had proof of illegal or unethical behavior by Debraska. I have no idea if they did so.

It was also during this time that one of the south side group referred to in the preceding paragraph (I will furnish the name upon request if your department would like to corroborate this fact. In the meantime, I must be concerned for their peace now that some of them are now out of prison) told me that Debraska was bad-mouthing me and feds in general on the street. If

you can imagine, a sworn officer speaking negatively about a fellow officer to a convicted felon. The old, divisive, unprofessional, "I am a better cop and will pay you more money than he will for your information routine."

This became more than simple friction or whatever observers might call it. Your officers told our internal affairs officers lies and made reckless accusations that they surely must have known were not true. This is especially remarkable given [REDACTED]91 (admitted to by agent Spang). I do not know what agent Spang did with that information, it is my guess, it was HE who didn't believe [REDACTED] sat on it. When [REDACTED] hit the Journal, only then did he call DA Reddin (on April 20, 1991). He called DA Reddin to discuss it now saying he told me about at the [REDACTED] That is not true. Why would he? [REDACTED] discuss murder [REDACTED] information not that he had committed murder) and later he says it he told [REDACTED] confessed and not it was ostensibly my responsibility to tell competent authority. How could anyone, i.e., your officers, then turn around three months and then three years later and slanderously state I obstructed justice!! All evidence points to the exact opposite. (Note: MPD stated to IA that they first became aware of [REDACTED] involvement in the subject murders on 3/7/91).

I have written to Assistant District Attorney Jon Reddin as well on this matter. I have, in fact, detailed what I believe to be reckless, illegal, and slanderous accusations made by officers Barry Debraska, Brian O'Keefe, and Kevin Stuhmer and asked if there are any applicable state charges that he would bring

against the three MPD officers (attached). As I mentioned earlier, I suspect the latter two based their feelings on what Debraska told them plus what they could get [REDACTED] ? My guess is that anything he said, however, originated with officer Debraska. [REDACTED] fact, confess to on 1/15/91. These facts were available to your officers. If I could discover them, certainly they should have also done so before making such conclusive, incorrect, and damaging statements about me. (I believe IRS agent Spang and Debraska are friends, this may also be a factor).

I ask that your department seek to determine the three MPD officers role in this matter, their [REDACTED] who initiated these allegations against me and based on what evidence. If they had the slightest proof or even inclination to believe I did such a thing, why didn't they interview me at the time to obtain the facts, or make their allegations known to the District Attorney's office, or advise our Internal Affairs office?? I can answer that - because it was all a house of cards that could not stand the light of truth and they knew it, certainly Debraska did.

I also seek under the Freedom of Information Act, whatever information your department has available relative to this matter. This would include the mysterious missing file as well as anything that was used to formulate the assertion made by officers Stuhmer, Debraska, and O'Keefe to our internal affairs agent. I have already obtained absolution from my agency. I intend, however, to gain justice.

Chief Arreola, I know you have more important things on your mind and I truly hate to bring such discord to your attention. The truth is, I guess, is that I didn't

start it, didn't deserve it, and the discord is apparently there anyway. Also if I didn't bring this to your attention, I feel it would simply continue when such a series of events occurs again and innocent, hard-working, honest law enforcement officers will be damaged like I was.

I can be reached at 202-927-2195 should you need any additional information.

Buford E. Gates
U.S. Customs
Office of Investigations
1301 Constitution Ave., NW
Room 5315
Washington, D.C.

List of Exhibits

1) Redacted copy of USCS IA closing report dated 6/1/95 summarizing allegations and findings made by MPD officers.

2) Customs Disclosure form documenting conversation with MPD's O'Keefe and Stuhmer, dated 3/14/91.

3) IA report dated 5/2/95 regarding interview with IRS agent Spang. In this report Spang discusses [REDACTED] confession of 1/15/91.

4) IA report dated 11/09/94 with IRS agent Spang. Cites my role and lack of involvement. Also cites possible MPD motive (personality) and MPD's anger over past events.

5) IA report dated 7/13/94, cites basis for investigation. Described as while meeting with MPD on another matter and during CASUAL conversation MPD detective (s) said I obstructed justice. Some sense of urgency! Memo also describes MPD officers stating they felt I was "protecting [REDACTED] if that so I would ask them to leave. They also stated here their conclusion that I had information months prior and did nothing with it. Conclusions are based on evidence. Where is theirs?

6) IA report dated 10/11/94. Describes meeting with MPD officer(s) where they states late 1990 or early 1991 [REDACTED] came to them and advised of two murders and that he had told "federal people about them and they would "take care of it." This

was MPD matter! Did they just drop it based on this assertion by an informant?? What feds? Murder is not federal offense except in certain circumstances!

7) IA report dated 5/25/94 summarizing interview with MPD detective (Stuhmer ?). Cites would meet with IA investigators in two weeks (where he later said he knew nothing else. Perhaps his conscience was bothering him?). MPD officer says "any and all documentation regarding the actions of Gates is missing from the file." How convenient. It never existed!

8) IA report dated 5/25/94 with MPD detective (in Internal Affairs). Cites that I made a false accusation against unknown MPD officer. (Who says I did? Is that a basis to believe it or to take such illegal revenge?). Report of interview of officer also states that MPD was contemplating a search warrant on my office? I'd like. to see the affidavit summarizing the probable cause.

June 20, 1996

Dear Mr. Reddin,

I received your reply to my letter dated May 14, 1996. Quite frankly, I was amazed at its brevity. I also believe you misunderstood the intention of my letter and its attachments. I understand that you may not recall certain events but I also understood you may have taken notes with which you could refresh your memory. I am curious that you could recall, and kept notes concerning a rather nondescript conversation you and I once had about Barry Debraska but have little or no recollection/notes of this far more substantive matter. I would appreciate your checking again if you have any notes which might shed light on my inquiries.

I also requested that you review my petition to determine if criminal charges could be brought against MPD officers Debraska, Stuhmer, and O'Keefe. I would hope that the documents and the narrative I submitted to you, should provide enough to conclude slander or related charges would be appropriate. I am giving, I should think, far more than was presented to you with which to charge me with obstructing an investigation. Of particular significance, is the fact, highly inaccurate and damaging statements were made about me in knowing disregard for the truth. How anyone can imagine there was even a hint of truth in such statements is more than a professional willingness to explore allegations. To even think such thoughts would be absurd, to tell others to damage one's career is criminal. Again, I had known [REDACTED] matter of, I believe two weeks, even if he had told me it hardly would have been obstruction

of justice. The truth [REDACTED] an IRS agent on 1/15/91, about two weeks I believe after I [REDACTED] and [REDACTED] said he knew something about murder. Yet, I am accused! If again, the MPD felt I had done such a thing, why wasn't I charged or the issue raised then..not three years later when Customs agents are at the MPD on "another matter."

I also asked about these police officers proposing to obtain a search warrant for my office to you or the DA's office. I would like to know if an affidavit summarizing their PC was submitted. I also asked for a copy if such a document was presented to you or the DA's office.

I also asked in general about retained documents and what rights I have under the Freedom of Information Act to obtain them. I believe you have a duty to at least let me know if such documents exist and how I may petition for them, at least if you cannot provide them under the scope of your authority.

In essence, you answered nothing. You merely stated you have little recollection about the actual events. I asked far more than that and I am not inclined to simply let this go. You made reference to having a file/notes regarding this matter so I am somewhat puzzled. If no documents or notes exist with which to refresh your memory or to provide me, that includes the whole office, please say so. If you have no professional responsibility to answer my inquiries, simply say so. If you simply chose not to, please say that.

I realize you are busy. I am too. I am, however, also interested in justice. I know you are too. I have included the questions I submitted to you in May. I would like the above questions as well as those listed in the May document answered. If they will not be answered for one reason or another or cannot be because no documents exist, then please say so. I am asking this as a citizen as well as a professional law enforcement officer. I cannot believe that I am asking too much.

This event went far beyond simple jealousy and childish bickering. I would like to obtain the facts and then decide the proper course of action. I hope you can appreciate my concerns and my goals. I cannot understand how the nefarious are given time and the harmed are blown off.

Again, please forgive the rather blunt tone of this letter. I am not in a pleasant mood over this. I realize my writing reflects that.

Sincerely,

Buford E. Gates

August 19, 1996

Mr. E. Michael McCann
District Attorney
City of Milwaukee
821 W. State Street
Milwaukee, Wi 53233-1485

Dear Mr. McCann,

I am the former Resident Agent in Charge for U.S. Customs, Office of Investigations for the State of Wisconsin. I was stationed in Milwaukee during the period 1988-1993. Sometime in late 1991 I became involved with an individual [REDACTED] was also an associate of MPD officer Barry Debraska. [REDACTED]was later was convicted of double homicide in Milwaukee and was sentenced to life imprisonment. MPD's investigation involving [REDACTED] role in the murders occurred, I believe, in early 1992. I left Milwaukee for Washington in early 1994. In the summer of 1995 I became aware that MPD officers made several allegations involving my obstructing justice by failing to turn over evidence in my possession which would have implicated [REDACTED] in these murders. These allegations were made to several people, most damaging of whom were our Internal Affairs agents who were at the MPD on "other matters" when the mentioned MPD officers brought up my so-called obstruction. (of course they never sought charges against me when it "happened" nor did they inform our IA people when it occurred but did so three years later and only when our people called on them on "another matter" and I am out of the city). The whole thing stinks of more than childish "fed bashing" and character assassination. I have been

damaged. Rather than go into the whole scenario for you let me simply say, I spoke with ADA Jon Reddin about this matter. On May 15, 1996, I sent a letter and several pages of exhibits to Mr. Reddin. I asked for several things, most notably of which was to charge MPD officers DeBraska, Stuhmer, and O'Keefe with malicious slander, false swearing etc. I received a one paragraph reply (attached) dated June 2, 1996 which answered none of my questions. In a letter dated June 20, 1996 I specifically asked DA Reddin to either charge the officers with whatever would be appropriate given the evidence, or to let me know I was all wet, or the evidence was satisfactory but your office wouldn't do anything. . . etc. I also asked under the Freedom of Information Act to obtain whatever records MPD or your office had in its possession relating to this matter and the allegations made against me. I received no reply.

I don't know if this is a cover up or not. I ask for your assistance in getting some type of response. I believe I have been needlessly and maliciously wronged. I have also provided DA Reddin with sufficient information to conclude whether or not there is sufficient probable cause to bring charges against the officers. I have attached only some of the aforementioned material ( DA Reddin has the evidentiary package) and ask your office for a determination in this matter.




Police Department

Philip Arreola
Chief of Police

*August 23, 1996*

*Mr. Buford E. Gates*
*U.S. Customs Service*
*Office of Investigations*
*Room 5315*
*Constitution Avenue, N. W.*
*Washington, D.C. 20229*

*Dear Mr. Gates:*

*I am writing in response to your letter dated August 19, 1996 regarding a package you forwarded to Chief Arreola on June 19, 1996. Please be advised that Chief Arreola did receive your package. The Chief has caused the Internal Affairs Division to conduct an investigation into this matter. We will advise you of the results of our investigation when it has been completed. I apologize for not acknowledging receipt of your package earlier than this date.*

*Sincerely,*

*PHILIP ARREOLA*
*CHIEF OF POLICE*

/s/ Michael Krzewinski
*MICHAEL G. KRZEWINSKI*
*CAPTAIN OF POLICE*
*OFFICE OF THE CHIEF*

*PA:MK:pc*

Police Administration Building,
749 West State Street, Post Office Box 531,
Milwaukee, Wisconsin 53201-0531 (414) 933-4444




OFFICE OF DISTRICT ATTORNEY
*Milwaukee County*
E. MICHAEL McCANN •
District Attorney

[Letterhead Names Omitted]

***PERSONAL AND CONFIDENTIAL***

*December 5, 1996*

*Buford E, Gates*
*U.S. Customs Service*
*Office of Investigations, Room 5315*
*Washington, DC 22044*

*Dear Mr. Gates:*

*I have received and reviewed your letter of August 1996. Further, I have discussed the matter with Mr. Reddin.*

*The United States Supreme Court in the case of Garrison v. Louisiana, 379 U.S. 64 (1964) gutted all of the criminal defamation laws of the various states, Although the Legislature of Wisconsin has seen fit to retain a criminal defamation statute, Wis. 942.01, I know of no criminal prosecution for defamation in Wisconsin subsequent to the Garrison case.*

*Years have now passed since the events of which you complain. I am sure that you feel wronged, and I am sorry that such is the case. I know nothing of the facts.*

*Our office is hard pressed daily with burglary, robbery, rape, murder, and many other prosecutions. We are grievously understaffed for the workload with which we struggle. I deeply regret that we have no resources to look into those matters of which you complain, particularly when it's clear to me that there could not be a successful criminal defamation prosecution in Wisconsin.*

*Sincerely yours,*

*/s/ E. Michael McCann 12/13/96*

*E. Michael McCann*
*District Attorney*

*EMM/jlm*

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Ginger Hansell, M.S., C.A.D.C. III
Susan Quiriconi, M.S.W.
Jeanine Fair, M.S.W.

**PSYCHOLOGICAL EVALUATION**

Heimermann, Scott A.
Eval. Date: 8/25/98 & 8/29/98

**PRESENTING PROBLEM:**

Mr. Scott A. Heimermann requested that a psychological evaluation be conducted to determine whether he suffered any emotional problems following a crime he witnessed in the 1989. In addition, he wanted to know if his behavior following the crime was consistent with any psychological reaction associated with witnessing such an event, and whether his conduct was consistent with an individual who was chronically worried.

**HISTORICAL BACKGROUND:**

Mr. Heimermann is currently 37 years old and is incarcerated at the Outagamie Justice Center in Appleton, Wisconsin. Mr. Heimermann states he has been incarcerated for approximately seven years, having been arrested as a party to a crime and for failure to report a crime. The specific crime involved a double homicide that occurred in 1989 in Milwaukee, Wisconsin. Mr. Heimermann states that he was initially incarcerated at Milwaukee County Jail, and following his conviction was transferred to the state prison at Waupun. Approximately four years ago he was transferred to the Dodge Correctional Center outside of Fox Lake, Wisconsin, and was transferred to his present setting earlier this month.

Mr Heimermann grew up on a farm in Chilton, Wisconsin. His mother and father divorced when he was five or six years old, and he states he has very little recollection of his father. He attempted contact with him as an adult, but was unsuccessful. His father had no contact with him during his developmental years.

His mother remarried and Mr. Heimermann considers his stepfather to be his father figure. Mr. Heimermann has one full brother, and two half-siblings, a brother and a sister. All siblings grew up on a dairy farm outside of Chilton, Wisconsin.

Educationally, Mr. Heimermann received average grades through the eleventh grade. He dropped out of school at that point, as he was no longer interested in attending school. He received a GED, and worked for several years in general labor occupations. These jobs included factory work and supervising a dairy. When the dairy operation folded, he began working as a truck driver. He leased equipment, and essentially was his own boss. It was during this time that he first developed an interest in real estate and investments. He attended classes at the Fox Valley Technical College, and received a real estate brokers license. He worked for a couple of years in the real estate field, and decided to strike out on his own buying and selling real estate. He had some success in his home town, and then began making purchases in Milwaukee. After approximately one year working in the Milwaukee area, he moved to that city and endeavored to make his fortune in real estate in that city. He describes his first year as extremely successful, but admits he was a poor financial manager. He essentially went bankrupt, but continued to seek real estate investment opportunities on a somewhat smaller scale.

It was at this point that he met an individual by the name of Ed Piscitello. This was in early 1989 by Mr. Heimermann's best recollection. He states that Mr. Piscitello represented himself as being in the market to liquidate a two million dollar estate. He showed Mr. Heimermann various properties around

the Milwaukee area, and Mr. Heimermann believed that he was about to come out of his real estate investment slump, and begin to make excellent money again.

In order to work on this real estate deal, Mr. Heimermann purchased a property on south 35th street in Milwaukee. This property had belonged to Mr. Piscitello's aunt who had passed away. Mr. Heimermann moved into the property, and became roommates with Mr. Piscitello at that address.

During this time, Mr. Heimermann admits that he was recreationaly abusing cocaine and alcohol on a weekly basis. He estimates that he used once to twice per week while in Milwaukee. He states he was only a recreational user, and never spent large quantities of money pursuing cocaine. He states he could easily go for several weeks without using the drug, and never felt any compulsion to use. He further states that he used with friends in recreational settings, and that it never interfered with his work. It caused no medical problems for him, and did not cause concern for his closest friends. His mother did suspect that he was using drugs, and Mr. Heimermann admits that he lied to his mother to allay her fears. He states that his cocaine use did not cause any of his financial hardships.

Regarding alcohol, he states he drank approximately one to two times per week. This was primarily at nightclubs, and he estimates he would have four to six drinks per occasion. He further states that on particularly stressful days, he may have one or two drinks in the evening. His drink of choice was primarily beer or mixed drinks. He states he became

mildly euphoric after drinking four or five drinks in approximately a four hour period. He further states that on occasions when he did become intoxicated, he would drink eight or nine. He considered his alcohol use to be recreational in nature as well. He went on to say that it caused him no medical, personal, financial or legal problems.

Mr. Piscitello was a frequent companion in his recreational circle. Mr. Heimermann introduced Mr. Piscitello to a long time acquaintance from childhood, by the name of Joe Isajiw. Following the introduction, Mr. Heimermann states that Mr. Piscitello arranged for drug buys for Mr. Isajiw with an individual from Chicago known to Mr. Heimermann as "T.C.". Mr. Heimermann was aware that Mr. Piscitello was acting as the middle man between TC and Mr. Isajiw. He estimates he was present during several of their transactions. It was this drug connection that eventually led to the double homicide.

According to Mr. Heimermann, Mr. Piscitello would take the money from Mr. Isajiw and deliver the cocaine from TC. After several transactions went bad, and Mr. Isajiw somehow lost his money, there was a great deal animosity built up. Mr. Heimermann states that it turns out Mr. Piscitello was pocketing the money, and blamed TC. This led Mr. Piscitello and Mr. Isajiw plot to murder TC in a set up drug deal.

During the time Mr. Heimermann knew Mr. Piscitello, Mr. Piscitello began talking about murdering the drug dealer, TC. His first mention of this came after Mr. Heimermann purchased the 35th street property. Mr. Heimermann states he was shocked initially, but after hearing this several times

from Mr. Piscitello he decided to complete his estate liquidation, and distance himself from Mr. Piscitello. Although he did not think Mr. Piscitello was capable of committing murder, he thought the frequent talk about murder was odd, and no longer wanted any part of this association. It was also during this time that Mr. Piscitello let him know that he was connected to the mob in the Milwaukee area, had some sort of connections with the police, and also had a connection to the DEA.

On the night before the double homicide occurred, Mr. Isajiw, Mr. Piscitello, and Mr. Heimermann went out partying in various nightclubs in the Milwaukee area. The trio went back to Mr. Heimermann's 35th street home and when Mr. Heimermann woke the next morning, Mr. Isajiw and Mr. Piscitello were already gone. After going through his normal morning routine such as drinking coffee and making a few plans for the day, Mr. Isajiw and Mr. Piscitello returned. They went to Mr. Piscitello's mother's home for lunch, and then went to a local fair. Following the afternoon's festivities, they returned to Mr. Piscitello's mother's home for dinner. They then returned to Mr. Heimermann's home and began getting ready to go out to area nightclubs.

At approximately eight p.m., Mr. Piscitello asked Mr. Heimermann to call TC to have him drop off some cocaine for the evening. Mr. Heimermann called TC, who arrived approximately one hour later with another individual. Mr. Heimermann states that Mr. Isajiw was in the basement at the time, and he led the two down the stairs with Mr. Piscitello bringing up the rear. Mr. Heimermann heard gun shots, and dove into another room in the basement. When he looked out he

could see TC laying on the ground, and then also saw the man that accompanied TC to the home laying there. He ran up the stairs out of the basement, followed by Mr. Piscitello and Mr. Isajiw. He states most of the events happened very quickly, and he cannot account specifically for time. He knows that TC arrived at their home approximately 9:00 p.m.. He also notes that Mr. Isajiw and Mr. Piscitello spent some time upstairs with him calming him down immediately after the incident. At one point, Mr. Piscitello stated that one of the victims was still alive, and went down to the basement, at which time Mr. Heimermann heard another shot. He finally promised Mr. Piscitello and Mr. Isajiw that he would not tell about anything that went on that evening. He then went downstairs with them, while Mr. Piscitello and Mr. Isajiw buried the bodies in a hole in the basement and cleaned the area up.

That evening, Mr. Heimermann followed Mr. Piscitello and Mr. Isajiw while they disposed of the victim's car.

Mr. Heimermann states that he was unable to sleep that night, or for several nights after that. He states that he was romantically involved with Mr. Piscitello's sister, Mary, and went to stay at her house, as he could not bear the thought of staying at the house with the crime that occurred. He states that the only time he re-entered the home after this incident, was to get his belongings and move them to Mary's dwelling. He states that he stayed with Mary for several weeks, at which time Mr. Piscitello was constantly around him. Mr. Piscitello made it a point to remind him of his connections with the mob, and his contacts with various law enforcement agencies. In

addition, he let Mr. Heimermann know that the murders were in retaliation for the slaying of a local mobster by the name of Max Adonis. During this time Mr. Heimermann states he was rather ineffectual in his business, lost his appetite, did not feel himself, and had difficulty thinking clearly or making plans. He was able to work on securing some credit for Mr. Piscitello and used this credit idea to get Mr. Piscitello and himself to Florida. Once in Florida, Mr. Heimermann states he made some excuses, and essentially convinced Mr. Piscitello that he was going to stay in Florida and work on real estate in that part of the country instead of Milwaukee. After approximately two weeks in Florida, Mr. Piscitello left for Milwaukee, and Mr. Heimermann stayed in Florida from that point until his arrest in 1991.

During the time immediately after these shootings, he states he was afraid for his life. Previously, he didn't think Mr. Piscitello was capable of murder, and he became acutely aware that he had completely misjudged this individual. He therefore was afraid for his own life, and provided reassurance to Mr. Piscitello in whatever means possible in order to protect his own personal safety. He states that it was in this capacity that he pawned some jewelry for Mr. Piscitello at a local jewelry store. He was unaware that the jewelry belonged to the victims, and apparently this is one of the factors that link him to the murders.

Once he was re-established in Florida, he states he felt a little bit of relief. He states he was never able to fully get away from Mr. Piscitello, as Mr. Piscitello would make contact with him through Mr. Heimermann's family. This made him scared for the safety of his mother and other relatives, because he

was not sure what Mr. Piscitello was capable of. When Mr. Piscitello did make contact with Mr. Heimermann, there were reminders of his various connections to the mob, Milwaukee Police Department, and the DEA. As a result, he was initially uncooperative with Milwaukee Police when first questioned, as he was unclear as to whether he was being set up, and thought this might be a clear message to Mr. Piscitello that he would not reveal what he knew about the murders. Once he was assured that Mr. Piscitello was in custody, he felt safe, and then told his full account to Milwaukee Police.

Mr. Heimermann stated that it took 9 to 12 months after the shootings before he was able to resume a normal daily routine. He essentially lost all focus on his goal of making it big in real estate, and did not feel like himself. He admits that he began binge drinking, and that when he consumed alcohol it was no longer in a recreational pattern. His use of cocaine also escalated during this time. He states that he could go for several days or weeks without abusing alcohol or drugs, but also could go for several days or weeks on alcohol and/or cocaine binges. He states that in hindsight he now recognizes he was trying to cope with the situation he had witnessed.

Mr. Heimermann states that when he did sleep, his sleep was frequently interrupted by dreams of the victims laying on the floor. He states that the frequency of these dreams was every time he fell asleep initially and eventually tapered to several times per week, and then down to several times per month. He notes that the dreams would recur after Mr. Piscitello made contact with him, and could occur on successive nights thereafter. He states his alcohol and

drug binges also occurred immediately following contact by Mr. Piscitello. He states these dreams continue to occur on a sporadic basis, and he continues to find them very distressing, even though the events occurred over 9 years ago.

In addition to the aforementioned changes, Mr. Heimermann went through frequent bouts of crying. Initially these happened almost continuously, immediately after the crime, and lessened to several times per week, and then several times per month. He states that they would often come upon him suddenly and unexpectedly, and he would have such strong feelings that he could not control his weeping. He said the tears came primarily from the guilt he felt at not being able to do anything to help the victims, and upon the recognition that these events had altered his life and his goals permanently. He felt a great deal of rage towards Mr. Piscitello and Mr. Isajiw and also towards himself for being such a poor judge of their character. He states that these were the types of thoughts that would continuously go through his head during his many sleepless nights.

He also entertained thoughts of suicide, but made no plans and had no intent to carry out such an action. He states he has not had any thoughts of homicide. He states he only began to feel some measure of relief after he learned Mr. Piscitello was incarcerated. At that point he felt safe, and felt that he could tell the secrets that had been troubling him.

As he learned further details about the case, and learned that Mr. Piscitello was an informant that told the Milwaukee Police that Mr. Heimermann was directly involved, he again felt a great deal of rage

towards Mr. Piscitello. As this information came to light, he also figured out that Mr. Piscitello had no contacts with the mob, and only had contacts with law enforcement agencies in his capacity as an informant. He states he confronted Mr. Piscitello with this while both were housed in the same block at the Milwaukee County Jail, and an altercation ensued. Mr. Heimermann states this is the last time he saw Mr. Piscitello.

* * *

[p.8]

fully considering the possible consequences. He tends to be intentions, and may be described as aloof and unapproachable by others. He tends to externalize blame, and features of paranoia are likely to be present.

He is currently having difficulty in interpersonal relations hips in his present setting. He appears to be sullen and resentful of others, and rather uncompromising in his interpersonal style. He may be described as manipulative and self-oriented in his behavior, which may cause difficulties for people close to him. Tendencies to go into a rage because of poor impulse control and low frustration tolerance may occur. His overall lack of trust prevents him from developing warm, close relationships. When frustration is high, he may become physically abusive or threatening towards persons. In general he holds a rather cynical view about life, which may influence his interpersonal relations. He may view relationships with others as potentially threatening and harmful.

Finally, the Megargee System of classifying male criminal offenders is useful in interpreting his MMPI-2 profile. In general, the Megargee system allows for the classification of approximately two-thirds of the offender population. It should be noted that Mr. Heimermann's MMPI-2 profile is not classifiable according to Megargee Criminal Offender Rules, as his profile does not match any of the profiles that typically characterize convicted felons. One should note that while scales measuring anti-social attitudes and behaviors on his MMPI-2 are elevated above the normal range, they are not sufficiently elevated to suggest that anti-social behavior is a continuous way of life or a lifestyle for Mr. Heimermann. Furthermore, his high level of paranoia is consistent with a person that is experiencing a great deal of difficulty adjusting to a correctional setting, and a person who generally feels mistrustful of those around him.

**SUMMARY:**

Mr. Heimermann most certainly suffers from post-traumatic stress disorder on Axis I of the DSM-IV. He certainly was involved in an event outside the realm of human experience (witnessed immediate aftermath of double homicide), and has re-experienced these events in his dreams ever since. He recounts a great deal of psychological distress when he is exposed to the reminders of the event, for instance, the phone calls and contacts with Mr. Piscitello.

Mr. Heimermann's move to Florida can be characterized as an attempt to avoid stimuli associated with this trauma. His moving in with Mary and out of the house that he owned immediately after the event is further evidence of avoidance. His anhedonia and

decreased interest in his business career, and feelings and worry that Mr. Piscitello was going to execute him next, along with the insomnia, difficulty concentrating, hypervigilance associated with Mr. Piscitello and his supposed contacts are all evidence of post-traumatic stress disorder, and consistent with the disorder. I should note that the symptoms began immediately after the event, and continue to this day, indicating that post-traumatic stress disorder is considered a chronic condition for Mr. Heimermann.

In addition to his post-traumatic stress, he also has generalized anxiety disorder stemming from his incarceration. It should be noted that most individuals after having served 7 years of a prison sentence have had plenty of time to adjust, and no longer worry about somebody coming to get them. This is not the case with Mr. Heimermann.

On Axis II I will diagnosis a mixed personality disorder with features of narcissism and anti-social personality. Mr. Heimermann admits to involvement in various criminal activities, consistent with such a diagnosis. In addition, it was his narcissistic orientation that resulted in his failure to accurately judge Mr. Piscitello and also to over estimate his own ability to deal with the situation at hand. In short, Mr. Heimermann believed he possessed the personality characteristics to continue with his real estate transactions despite the talk of murder on the part of Mr. Piscitello. He fully believed he could complete his two, million dollar real estate deal, and walk away from the transaction having little or no contact with Mr. Piscitello. In retrospect he recognizes that Mr. Piscitello probably noted these characteristics in him, and essentially fed him whatever information would be

consistent with Mr. Heimermann's dreams of being independently wealthy on this deal.

On Axis III of the DSM-IV, I note there are complaints of headache and stomach upset associated with his anxiety, neither of which appear to be chronic conditions. He is otherwise in good physical health.

On Axis IV, I note that the primary psychosocial stressor is his legal situation, as he is currently incarcerated.

On Axis V, I would place his current global assessment and functioning at approximately 70, with the highest GAF score in the past year at approximately 80.

In a telephone interview with his mother, Joan Heimermann, she confirms the majority of the psychological account contained herein. In essence, she states that Scott was a very active youth, that he never got in trouble with the law until the problems with his bank loans, that he did indeed drop out of school in eleventh grade out of boredom, and that there was a marked change in his personality following the murders. While she was unclear as to when the murders took place, she states that when Scott came back to visit her after his move to Florida, he was clearly not himself. She states that it was obvious to her that he was forcing himself to laugh and joke around, which were features of his personality that came quite natural previously. She further states that she has noted periods of intense distress while Mr. Heimermann has been incarcerated, including breaking down into tears and weeping heavily up to

three times one visit, which is very uncharacteristic of him.

My conclusions in this matter are based on both history and clinical impression. First of all, it is very unlikely for an individual who has previously had very little trouble with the law, to be involved in the planning and carrying out of a double homicide. While Mr. Heimermann was clearly involved in various illegal activities, none involved direct physical threats, assault, or aggressive intent. His were crimes in which the victim was not directly confronted. Secondly, his recounting of his premorbid personality and behavior starkly contrasts between his post morbid and current mental status. This stark contrast was precipitated by the double homicide, and is consistent with post-traumatic stress disorder. Finally, in the interview with his mother, she confirms there was remarkable changes in his personality following the murder, even though she was unaware that a murder had occurred and that Mr. Heimermann was some how involved. In addition, she confirms most of Mr. Heimermann's premorbid adjustment, including a suspicion that her son had been using drugs. She stated that her son lied to her to cover up his drug use, but that he has since acknowledged that she was right. My conclusions are drawn to a reasonable degree of psychological certainty.

/s/ Thomas J. Hayes
Thomas J. Hayes, Ph. D.
Psychologist

TJH:dp

**STATE OF WISCONSIN**
**MILWAUKEE COUNTY**
**CIRCUIT COURT**

**Case No. F-911618**

STATE OF WISCONSIN,
Plaintiff,

VS.

SCOTT A. HEIMERMANN,
Defendant.

## AFFIDAVIT OF JOSEPH ISAJIW

STATE OF WISCONSIN )
) SS.
COUNTY OF DODGE )

Joseph Isajiw, being first duly sworn, deposes and says as follows :

1. That I was a defendant in the above-entitled action. That I give this affidavit solely for the purposes of Scott A. Heimermann's court proceedings.

2. That I am currently sentenced to two life sentences which are concurrent to each other and I presently have a parole date of 2004.

3. That I am currently incarcerated at the Waupun Correctional Institution, and have been since August 1991. After I plead guilty to the murders of Muhammad Binwale, also know as "T.C." and Deon Russell.

4. That I testified as a State witness against Scott A. Heimermann.

5. The affiant does recall that several weeks before the murders that Mr. Heimermann, Mr. Piscitello and the affiant were in the basement at 941 South 35th Street and were partying with beer and cocaine and were target practicing with a pistol. The affiant noticed some holes in the floor that were the size of the average person. The affiant asked Mr. Piscitello what the holes were for and was told they were for some plumbing work. Then he further stated, "Yeah, just the right size for a couple of bodies to fit in." The affiant thought he was joking when Mr. Piscitello said this in front of the affiant and Mr. Heimermann. Mr. Piscitell went on to state that there were probably bodies in some of the basements in Milwaukee by the Mafia.

6. The affiant also recalls that before the murder plan was discussed Mr. Heimermann Mr. Piscitello and the affiant made different buys of cocaine while all together from Mr. Binwale and Mr. Russell. During one of these buys while all together the cocaine came up short. On one of the occasions the buy came up short but it was decided to let it go. On the next buy that was arranged Mr. Piscitello, Mr. Heimermann and the affiant were together. Once there Mr. Piscitello asked the affiant if he had brought his pistol and when the affiant stated "yes", he stated that this

would be a perfect time to kill Mr. Binwale and Mr. Russell.

The affiant said "no" that the location was too open. The buy was made. The affiant stated to Mr. Binwale and Mr. Russell that the last buy had been short and that it wasn't good business and that if shortages continued something could happen. When the affiant was finished with the buy the affiant informed Mr. Heimermann and Mr. Piscitello of the affiants comments to Mr. Binwale.

7. [illegible] Mr. Piscitello had breakfast together at a restaurant but there was no discussion of the muder plan. Mr. Heimermann was not at the restaurant but at the home sleeping. The affiant did comment to Mr. Piscitello, "You know we partied all the cocaine away and I was supposed to have saved some for some friends in Chilton." Mr. Piscitello said, "Don't worry about it I have a plan." Until we reached the house there was no further mention of any plan.

8. That the affiant and Mr. Piscitello returned to the house where Mr. Heimermann had been sleeping. It was at this point that Mr. Piscitello started to talk seriously about how we could obtain more cocaine and money from Mr. Binwale and Mr. Russell by taking them out. Mr. Piscitello went on to tell the affiant and Mr. Heimermann that he knew how we could get money and cocaine because he knew some people who wanted these guys taken out, and we could make some big money doing it.

9. Mr. Piscitello had Mr. Heimermann and the affiant follow him to the basement at the residence of 941 South 35th Street where he started laying the

plans out for the murders. Mr. Piscitello started by stating he knew some people who wanted Mr. Binwale and Mr. Russell taken out and that they'd get big money for doing that along with some free cocaine.

10. Mr. Piscitello told Mr. Heimermann that he would need to phone Mr. Binwale since Mr. Heimermann and Mr. Binwale knew each other well, better than Mr. Piscitello and the affiant did. Mr. Heimermann was instructed to tell Mr. Binwale that there would be a buyer at the house to motivate Mr. Binwale to come to the house.

Mr. Piscitello went on to detail how the murders were to take place. Mr. Piscitello said that Mr. Heimermann would lead Mr. Russell and Mr. Binwale down the basement stairs when they arrived and the affiant was to wait in a room that had a window that would afford the affiant the ability to shoot at Mr. Binwale and Mr. Russell once Mr. Heimermann was clear. Mr. Piscitello was to be at the rear of the group going down the stairs and would open fire once Mr. Heimermann was clear. Mr. Piscitello said this was what was called a dry run of the plan.

11. Mr. Piscitello went on to discuss how to dispose of the bodies. He said that the holes in the basement floor that had been used for some plumbing work would be used. That Mr. Heimermann and the affiant would have to seal the holes with plastic to prevent the smell from escaping. Then quick drying cement would be used to fill the holes and cover the bodies. The affiant said fine while Mr. Heimermann remained silent.

12. When Mr. Heimermann made the phone call to lure Mr. Binwale and Mr. Russell to the house to sell cocaine to a non-existent buyer the affiant assumed Mr. Heimermann agreed with the plan and was going to go through with it. Which is what occurred, everything went the way Mr. Piscitello had planned. Mr. Piscitello, Mr. Heimermann and the affiant completed the plan by together burying the murdered Mr. Binwale and Mr. Russell in the basement floor.

13. That I made this affidavit of my own free will with a clear and truthful heart and conscious, and not as a result of any threats or promises, and I am willing to testify at a hearing or any Court proceeding requiring all statements contained herein.

/s/Joseph Isajiw 10-28-98
Joseph Isajiw, Affiant

Subscribed and sworn to before me
this 23rd day of October 1998

/s/_____
NOTARY PUBLIC/STATE OF WISCONSIN
MY COMMISSION EXPIRES: 3-13-2002

* * *

[p.41]

should believe him because he made no attempt, as I said, to shift the blame in this case. He told you that in his testimony, that he and Mr. Piscitello were the main actors in this crime. That's clear. There is no question about that.

The defendant is being tried as being a party to the crime. And the Court is going to read to you an instruction on party to a crime, which tells you that the defendant is guilty of the crime if he, number one, directly commits it and number two, intentionally aids and abets it, and that will be defined for you further by the Court, and renders aid to the person who commits the crime. He clearly did that. He got the victims over and led them down to the killing field. Or someone who is willing and ready to render aid. We don't have to get to that. He did render that aid. He subsequently took in all that was involved, was involved in all the actions the defendant took with those bodies. In addition the Court will instruct you that if he is a party to a conspiracy with intent that the crime be committed, he is guilty as the persons who actually pulled the trigger. He was clearly involved in a conspiracy in this case. The Court will instruct you that all that is essential to constitute a conspiracy is a mere understanding, either expressed or unexpressed. Here there was an expressed understanding.

[p.42]

Mr. Isajiw testified that Ed Piscitello-- It was all Ed's idea. There's no question about that. That Ed

Piscitello thought up this plan, detailed it to the defendant, said Scott, you're going to go down, and you're going to call T.C. You're going to get T.C. over here, and then you're going to lead him down to the basement. Joe is going to be in the basement. I will be at the top of the stairs, and we're going to kill him. And Scott-- Remember what Scott said. Okay. That's the understanding. That's the agreement that they had. And then did he go and leave the house and say I'm not going to be involved in this? He's going to kill human beings. You're crazy. I'm not going to do this. No. He called T.C. T.C. came over. He led them into the basement and they were both killed.

There's never been an implication or a contention that the defendant in this case had the gun or shot anyone. You all understood that on voir dire. You understood it on opening statement. He is being tried for his aiding and abetting and being a party to a conspiracy in the deaths of these two human beings.

But what corroboration is there? I submit to you that if Mr. Isajiw had gotten on the stand and testified and there wasn't any corroboration at all, his testimony was credible. But understandably he is a murderer. For whatever else he is, whatever he has seen, whatever light

* * *

| PO15-B 5.89 SUPPLEMENT REPORT MILWAUKEE POLICE DEPARTMENT | • INCIDENT SUPPLEMENT<br>○ ACCIDENT SUPPLEMENT<br>○ JUVENILE SUPPLEMENT | PAGE 1 of 2 | DATE OF REPORT 05-02-91 | INCIDENT/ ACCIDENT # 91-15848/M2410 |
|---|---|---|---|---|

| INCIDENT INFORMATION | INCIDENT HOMICIDE (SHOOTING) | DATE OF INCIDENT/ ACCIDENT 03-08-91 (discovery date) | REP CON # |
|---|---|---|---|
| | VICTIM RUSSELL, Dion V. | LOCATION OF INCIDENT/ACCIDENT (Address) 941 S. 35th Street | DIST 6 |

| JUVENILE LAST NAME<br>FIRST MID | DATE OF BIRTH | ○DETAINED<br>○ORDERED TO MCCC<br>○OTHER |
|---|---|---|

| QUAN | TYPE OF PROPERTY | DESCRIPTION | SERIAL # | CODE # | VALUE |
|---|---|---|---|---|---|

On Monday, 4-22-91, from approximately 4:01PM until 7:40PM, an interview of Joseph ISAJIW was conducted in the 4th floor Conference Room, located in the CIB, by Detectives Paul STUHMER and Brian O'KEEFE.

During this interview, Joseph ISAJIW admitted involvement in this offense. A summary of his statement was reduced to writing and was eventually attached to his arrest report (contained in Homicide file).

During this interview, the suspect was questioned regarding the location of the weapons used in this offense. I informed him we were interested in the recovery of these weapons and ISAJIW eventually responded, "The guns used in this offense were possibly still in the possession of a family member". He was reluctant to identify this family member, stating he did not want to get the relative involved. ISAJIW was told we were only interested in obtaining the weapons used in this offense. ISAJIW stated he would make a phone call for us and would attempt to accomplish the recovery of the weapons. He also made the suggestion that he, ISAJIW, make arrangements to have the guns mailed to us.

At that time we informed him that it would be a violation of Federal laws to send firearms through the United States mail. Joseph ISAJIW indicated that he would make a telephone and would attempt to assist us in the recovery of the weapons used in this offense, if arrangements could be made to leave his relatives out of this matter.

Arrangements to recover the weapons were not completed on this date.

On Tuesday, 4-30-91, at 7:PM, I met with Joseph ISAJIW in the Milwaukee County Jail where he is currently incarcerated and awaiting court proceedings regarding this matter. The purpose of this contact was

to obtain the name of ISAJIW'S attorney. I told ISAJIW that I wanted to contact his attorney and submit my request for assistance in the recovery of these weapons, through his attorney. At that time Joseph ISAJIW did not know the name of his attorney, however he related that his attorney was a member of the Public Defender's office.

I informed Joseph ISAJIW that I would contact the Public Defender's office in an attempt to identify his attorney and contact the subject with my request.

On Wednesday, 5-1-91, I contacted the Public Defender's office and learned Joseph ISAJIW'S current attorney is Thomas HAYES.

M 240 / SEC 4 / PAGE 173

| REPORTING OFFICER PAYROLL # LOC CODE | SUPERVISOR SIGNATURE |
|---|---|
| | |

## AFFIDAVIT OF WILLIAM N. GERHARTZ

**Re:** Proposed testimony in Support of Mr. Scott Heimermann

State of Wisconsin )
) ss.
County of Chippewa )

TO: Ralph J. Sczygelski
Sczygelski Law Firm
1131 So. 8th Street
Manitowoc, WI. 54220

I William N. Gerhartz being first duly sworn, does say and depose the following statements/proposed testimony are true and correct, to the best of my knowledge.

That my name is William N. Gerhartz, WDOC#193631; I am currently housed at Stanley Correctional Institution, 100 Corrections Drive, Stanley, WI. 54768-6500, on an "OWI" charge.

I am writing to you in response to Mr. Scott Heiermann, a cousin of mine. What I am about to tell you is the honest truth, so help me God. I know all the people for some years, which I'm about to name. I was at a bar in Kau kau na, Wis., back sometime around 1992 or 1993. The bar's name was Bachelor's Two. A fight broke out. I stepped in to help this guy, Dan Sell, out. I knew Mr. Sell and his family for sometime. After the fight was over, we started talking about the Isajiw and Heimermann situation. Mr. Sell told me that Isajiw was up by his half brother Chuck Riley's home

around Throp Wisconsin hiding from the police for a few days till Mr. Isajiw had figured something out, before he turned himself in. Mr. Sell told me Chuck Riley told Joe Isajiw to take some kind of deal before he turned himself in. Riley told Isajiw that he would have to sit some time in prison, by not life. So after that he turned himself in to the FBI, after he had everything set up. That is what Mr. Sell told me.

I declare under the penalty of perjury that the foregoing statements/proposed testimony are true and correct to the best of my knowledge.

Executed this 5 day of March, 2007.

/s/ William N. Gerhartz
William N. Gerhartz WDOC# 193631
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI. 54768-6500

Subscribed and sworn before me
On 3/5/2007
/s/Roxanne Capell Willison
Notary Public
State of Wisconsin,
My commission ends, 10/18/2009.

PL-10 Rev 5-84 M2410 + M2411

**MILWAUKEE POLICE DEPARTMENT**

**LONG DISTANCE TELEPHONE REPORT**

Date Wed. 3-27-91 Time 8[20] P.M.

To }
(From) } Name DANBROVA, Joanne
Place Miami, FLA.

Regarding: Homicide Invest. M2410 + M 2411

Wanted for: Witness

Information Suly stated she is still incarcerated in Miami on the drug related charges, Jail #30219.

Placed }
(Received) by } /s/Larry G. Godager
Rank Lt.

Referred to Det. Brian O'Keefe or Vince Vitale
Date 3-27-91 Time 8[30] P.M.

* * *

[p.98]

A It was before T.C. came over.

Q And had you used any cocaine at that point?

A No, not before.

Q The Cocaine that you used is after T.C. came over; correct?

A Yes.

Q So at the time you heard that statement, you were not under the influence of cocaine?

A No.

Q Were you drunk?

A No, not drunk.

Q For how long a period of time did you use cocaine?

A After that evening?

Q Just in your life. I mean, how -- are you using it now?

A No. I haven't ever since I was -- it's been almost two years -- a year. Since I've gotten away from them, I haven't used it.

Q Did you go through a treatment program?

A Oh, yes, I did.

Q And you haven't used drugs since then?

A Right.

MR. REDDIN: That's all.

THE COURT: Mr. Kohler, anything further for the witness?

* * *

L.A. CASTILLE

Licensed
MORTGAGE BROKERAGE BUSINESS
And
REAL ESTATE BROKER

SUNRISE BAY CENTER
2701 E. Sunrise Boulevard
Fort Lauderdale, Florida 33304

PHONE (305) 566-3232

December 22, 1992

Mr. Scott A. Heimermann
P.O. Box 351
Waupon, Wisc. 53963

Dear Scott,

Received your letter requesting funds to pay your attorney. Wish I could help but can't at this time.

Your attorney did tell me that he spoke with Piscetello, and I told him they did frame you. Your attorney told me he could not figure out why they would want to do that. He also told me he believes you had nothing to do with what occured and I told him that was my attitude also. He then told me he thought you would get out in a few more months. HOPE SO!

Sky is beautiful here. About 75 degrees. You will appreciate it when you get out!

HAVE PATIENCE. "Easy for me to say"

Certainly hope this is the last Christmass you'll spend in the clink!

/s/
Lou

# INMATE STATUS/MOVEMENT HISTORY
INQUIRY DATE: 05 23 08

CIPIS -114B

| | | | |
|---|---|---|---|
| CASE #: | 089444 A | NAME: | PISCITELLO, EDWARD J |
| DOB: | 12 29 1953 | AREA: | 31305 |
| | | ASSIGNMENT DATE: | 07 01 1998 |
| SUPV INST: | COLUMBIA CI | WR/SR STATUS: | NO DATA |
| LOC/ STATUS: | RELEASED | RELEASE DATE: | 09 01 2006 |
| SEC CLASS: | MAXIMUM | MR/ES DATE: | PED |
| SPEC RVW: | | MAXIMUM DISCHARGE DATE: | LIFE |
| MINN CASE #: | | ATR CONTRACT RELEASE DATE: | |
| DIS STATUS: | | DIS CONFINEMENT TIME DATE: | |

## MOVEMENT HISTORY

| MVT DATE | MVT TYPE | TO LOCATION | TO SUPER-VISION | TO SEC | DIS |
|---|---|---|---|---|---|
| 09 01 06 | REL-DEATH | RELEASED | COLUMBIA CI | | |
| 09 01 06 | ABS-MEDICAL | OTHER MED HOSP | COLUMBIA CI | | |

| | | | |
|---|---|---|---|
| 01 18 06 | TFR-SUPV AND LOCATION | COLUMBIA CI | COLUMBIA CI |
| 05 26 04 | TFR-SUPV AND LOCATION | WINNEBAGO CO-JC | WINNEBAGO CO-JC |

PF7=TOP OF LISTING; PF8-SCROLL FORWARD




CLERK OF CIRCUIT COURT
CRIMINAL DIVISION
*Milwaukee County*
JOHN BARRETT •
Clerk of Circuit Court/
Register in Probate

[Letterhead Names Omitted]

June 10,2009

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Inmate No 159200
Waupun Corr Inst
P.O. Box 351
Waupun, WI 53963-0351

JOHN CHISHOLM
District Attorney
BY: KAREN A. LOEBEL
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Safety Building
821 West State Street
Milwaukee, WI 53233

In re: Case Number 1991CF911618A
STATE OF WISCONSIN, Plaintiff
-vs-
SCOTT ALAN HEIMERMANN, Defendant

APPEAL NUMBER 2009AP001092CR

Notice is hereby given that the appeal record for the above entitled case has been assembled and is available for inspection. A list of the papers constituting the record is attached.

All examinations of the record and additions thereto, must be completed before the mailing date. The record will be forwarded to the Clerk of the Court of Appeals on JUNE 25,2009 per 809.15 (2) and (4).

Sincerely,
JOHN BARRETT
Clerk of Circuit Court/
Court Services Director

/s/ Michelle Cywinski
By: Michelle Cywinski

Attachment

SAFETY BUILDING, ROOM 117 •
821 WEST STATE STREET • MILWAUKEE, WI
53233 • CUSTOMER SERVICE: (414) 278-4538
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RECORDED INFORMATION LINE (414) 278-4599

THE RECORD ON APPEAL NO. 2009AP001092CR CONSISTS OF THE FOLLOWING:

| | | |
|---|---|---|
| 1 | - 35 | Judgment Roll for Appeal No 92-32 15-CR |
| 2 | - 5 | Criminal Complaint |
| 3 | - 1 | Attorneys for the Defendant, Flessas Law Offices by Peter N. Flessas, J.D., Notice and Motion to Withdraw |
| 4 | - 1 | Order Appointing Counsel dated September 18, 1991 |
| 5 | - 4 | Defendant's Notice of Motion and Motion to Adjourn with Attached Affidavit of Martin E. Kohler |
| 6 | - 2 | Defendant's Notice of Motion and Motion to Suppress Statements and Writings of the Defendant |
| 7 | - 7 | Defendant's Demand for Discovery and Inspection |
| 8 | - 2 | Defendant's Demand for List of Plaintiffs Witnesses |
| 9 | - 3 | State's List of Witnesses |
| 10 | - 2 | Defendant's Witness List |
| 11 | - 2 | State's Amended List of Witnesses |
| 12 | - 2 | Defendant's Motion in Limine |
| 13 | - 4 | Inter Office Communication dated December 9, 1991 to Judge Gram, Jr., from Jon N. Reddin, Assistant District Attorney, Regarding the State's Opposition to Wisconsin Criminal Jury instruction #245 on Testimony of Accomplice |
| 14 | - 15 | Jury Instructions |
| 15 | - 1 | Jury Verdict - Count One |
| 16 | - 1 | Jury Verdict - Count Two |

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| 17 - | 1 | Gold Envelope Containing the Pre Sentence Investigation Report |
| 18 - | 1 | Pre Trial Incarceration Credit |
| 19 - | 1 | Judgment of Conviction dated February 25, 1992 |
| 20 - | 2 | Defendant's Notice of Intent to Pursue Post Conviction Relief |
| 21 - | 105 | Defendant's Post Conviction Relief Motion Pursuant to Wis State 974.06 – Supplement Motion |
| 22 - | 3 | Defendant's Supplement to 974.06 Motion |
| 23 - | 53 | Memorandum in Support of Defendant's Motion for New Trial |
| 24 - | 1 | Defendant's Letter Motion to Withdraw dated September 29, 1992 |
| 25 - | 3 | Defendant's Notice of Motion and Motion for Evidentiary Hearing |
| 26 - | 33 | State's Memorandum in Opposition to Defendant's Motion for a New Trial |
| 27 - | 9 | Defendant's Reply Memorandum |
| 28 - | 7 | Decision on Motion for New Trial dated November 23, 1992 |
| 29 - | 2 | Notice of Appeal |
| 30 - | 1 | Statement on Transcript |
| 31 - | 4 | Transcript of Reporters Notes dated May 6, 1991 – INITIAL APPEARANCE (PM) |